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Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
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	LABOR			LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

NOTE: As of July 3, 1978, documents from the following agencies in the Department of Health, Education, and Welfare are no longer being assigned to the Tuesday/Friday schedule: Alcohol, Drug Abuse and Mental Health Administration (ADAMHA); Center for Disease Control (CDC); Health Resources Administration (HRA); Health Services Administration (HSA); National Institutes of Health (NIH); and Public Health Service (PHS).

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(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

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This is a continuing listing of public bills that have become law, the text of which is not published in the FEDERAL REGISTER. Copies of the laws in individual pamphlet form (referred to as "slip laws") may be obtained from the U.S. Government Printing Office.

[Last Listing: July 13, 1978]

S. 2401 ..... Pub. L. 95-319
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[3195-01]

Title 3—The President

Executive Order 12071 • **July 12, 1978**

President's Commission on Pension Policy

By the authority vested in me as President by the Constitution of the United States of America, and in order to create in accordance with the Federal Advisory Committee Act (5 U.S.C. App. I) an advisory commission on national policies for retirement, survivor, and disability programs, it is hereby ordered as follows:

1-1. *Establishment of Commission.*

1-101. There is established the President's Commission on Pension Policy. The Commission shall be composed of eleven members.

1-102. The members of the Commission shall be appointed by the President. The President shall designate a Chairman from among the members.

1-2. *Functions of the Commission.*

1-201. The Commission shall conduct a comprehensive review of retirement, survivor, and disability programs existing in the United States, including private, Federal, State and local programs.

1-202. The Commission shall develop national policies for retirement, survivor, and disability programs that can be used as a guide by public and private programs. Those policies must be designed to ensure that the Nation has effective and equitable retirement, survivor, and disability programs which take into account available resources and demographic changes that are expected into the middle of the next century.

1-203. The Commission shall submit to the President a series of reports. These reports shall include the Commission's findings and recommendations on short-term and long-term issues with respect to retirement, survivor, and disability programs, including, but not restricted to, the following:

(a) present overlaps and gaps among the private, State and local sectors in providing income to retired, surviving, and disabled persons;

(b) the financial ability of present private, Federal, State and local retirement, survivor, and disability systems to meet their future obligations;

(c) appropriate retirement ages, the relationship of the annuity levels to past earnings and contributions, and the role of current retirement, survivor, and disability programs in private capital formation and economic growth;

(d) the implications of the recommended national policies for the financing and benefit structures of the retirement, survivor, and disability programs in the public and private sectors; and

(e) specific reforms and organizational changes in the present systems that may be required to meet the goals of the national policies.

1-204. The Commission shall submit its final report, including its recommendations and findings, to the President prior to its termination.

1-3. *Administrative Provisions and Financial Support.*

1-301. At the request of the Chairman each Executive agency that has an interest or responsibility in the areas of the Commission's functions shall designate an individual to act as liaison with the Commission and its staff.

1-302. In performing its functions, the Commission shall seek the advice of individuals and groups interested in policies applicable to retirement, survivor, and disability programs and systems. In seeking advice from interested individuals and groups, including public and private organizations, the Commission or any committee thereof, may, among other activities, hold hearings and sit and act at such times and places as the Commission or such authorized committee may find advisable.

1-303. The Commission may request any Executive agency to furnish such information as may be helpful for the fulfillment of the Commission's functions under this Order. Each such agency is authorized, to the extent permitted by law and within the limits of available funds, to furnish such information to the Commission.

1-304. The Commission is authorized to appoint and fix the compensation of a staff, including not more than one position at the GS-18 level, as may be necessary to enable it to carry out its functions. The Commission may obtain services in accordance with the provisions of Section 3109 of Title 5 of the United States Code, to the extent funds are available therefore.

1-305. Each member of the Commission who is not otherwise employed in the Government may receive, to the extent permitted by law, compensation for each day he or she is engaged upon the work of the Commission at a rate not to exceed the maximum daily rate now or hereafter prescribed by law for GS-18 of the General Schedule, and may also receive travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5703) for persons in the government service employed intermittently.

1-306. The General Services Administration shall provide administrative services, facilities, and support to the Commission on a reimbursable basis.

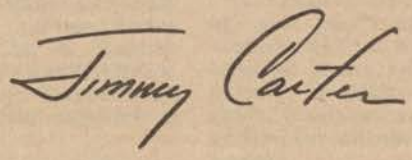
1-307. All necessary expenses incurred in connection with the work of the Commission shall be paid from the appropriation for "Unanticipated Needs," in the Executive Office Appropriations Act, 1978, or from such other funds as may be available.

1–4. *General Provisions.*

1–401. The functions of the President under the Federal Advisory Committee Act (5 U.S.C. App. I), except that of reporting annually to the Congress, which are applicable to the Commission, shall be performed by the Administrator of General Services.

1–402. The Commission shall terminate one year after the effective date of this Order.

1–403. This Order shall be effective on the day of the first meeting of the Commission members.



THE WHITE HOUSE,
July 12, 1978.

[FR Doc. 78-19694 Filed 7-13-78; 10:38 am]

rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

[6325-01]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of Agriculture; Appalachian Regional Commission

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment excepts under schedule C certain positions at the Department of Agriculture and the Appalachian Regional Commission because they are confidential in nature.

EFFECTIVE DATE: June 29, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael Sherwin, 202-632-4533.

Accordingly, 5 CFR 213.3313(p)(2) is added and 213.3376(b) is amended as set out below:

§ 213.3313 Department of Agriculture.

* * * * *

(p) *Science and Education.* * * *

(2) One private secretary to the Director.

* * * * *

§ 213.3376 Appalachian Regional Commission. * * *

(b) Two private secretaries to the Federal Cochairman and one private secretary to his alternate.

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-19451 Filed 7-13-78; 8:45 am]

[6325-01]

PART 213—EXCEPTED SERVICE

Department of Commerce

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under schedule C one position of Deputy Under Secretary for Regional Affairs, Office of the Secretary, Department of Commerce because the position is confidential in nature.

EFFECTIVE DATE: June 17, 1978.

FOR FURTHER INFORMATION CONTACT:

On position authority contact: Dean Bollman, Civil Service Commission, 202-632-7676.

On position content contact: John Golden, Director of Personnel, Department of Commerce, 202-377-4808.

Accordingly, 5 CFR 213.3314(a)(13) is added as set out below:

§ 213.3314 Department of Commerce.

(a) *Office of the Secretary.* * * *

(13) Deputy Under Secretary for Regional Affairs.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218.)

For the U.S. Civil Service Commission.

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-19453 Filed 7-13-78; 8:45 am]

[6325-01]

PART 213—EXCEPTED SERVICE

Department of Energy

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: Twelve exceptions and appeals analyst positions at grades GS-7 through GS-11 are excepted under schedule B when filled by persons selected under DOE's fellowship program in its Office of Hearings and Appeals because it is impracticable to examine competitively for positions filled under this program.

EFFECTIVE DATE: July 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael Sherwin, 202-632-4533.

Accordingly, 5 CFR 213.3231 is added as set out below:

§ 213.3231 Department of Energy.

(a) Twelve exceptions and appeals analyst positions at grades GS-7 through GS-11, when filled by persons selected under DOE's fellowship program in its Office of Hearings and Appeals, Washington, D.C. Appointments under this authority shall not exceed 3 years.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-58 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-19452 Filed 7-13-78; 8:45 am]

[6325-01]

PART 213—EXCEPTED SERVICE

Amendment to Nepotism Restriction

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This document amends the nepotism restrictions to authorize, with prior Commission approval, waiver of the prohibition on agency excepted service hiring of sons and daughters of its civilian or military employees for summer or student employment when an agency is the only significant employer in a remote location and an agency's employees and their families are the only significant labor source.

EFFECTIVE DATE: July 4, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael Sherwin, 202-632-4533.

Accordingly, 5 CFR 213.3101(b) is amended by adding item (5) as set out below:

§ 213.3101 Positions other than those of a confidential or policy-determining character for which it is not practicable to examine.

* * * * *

(b) An agency (including a military department) may not appoint the son or daughter of a civilian employee of that agency, or the son or daughter of a member of its uniformed service, to a position listed in schedule A for summer or student employment

within the United States. This prohibition does not apply to the appointment of persons: (1) Who are eligible for placement assistance under the Commission's displaced employee (DE) program, (2) who are employed to meet urgent needs resulting from an emergency posing an immediate threat to life or property, (3) who are members of families which are eligible to receive financial assistance under a public welfare program or the total income of which in relation to family size does not exceed limits established by the Commission and published in the Federal Personnel Manual, (4) who are severely physically handicapped or mentally retarded when such appointments are approved in advance by the Civil Service Commission, or (5) who are employed, with prior Commission approval, in an agency when an agency is the only significant employer in a remote location and an agency's employees and their family are the only significant labor source.

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954-58 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-19454 Filed 7-13-78; 8:45 am]

[3410-05]

Title 7—Agriculture

CHAPTER VII—AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE (AGRICULTURAL ADJUSTMENT), DEPARTMENT OF AGRICULTURE

SUBCHAPTER C—SPECIAL PROGRAMS

PART 760—INDEMNITY PAYMENT PROGRAMS

Subpart—Beekeeper Indemnity Payment Program (1978-81)

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to amend the Beekeeper Indemnity Payment Program Regulations to incorporate provisions of the Food and Agriculture Act of 1977 (Sept. 29, 1977, Pub. L. 95-113, 91 Stat. 921). The objective of the program is to make indemnity payments to beekeepers who, through no fault of their own, have suffered losses of honeybees as a result of utilization of economic poisons near or adjacent to the property on which the beehives of such beekeepers were located. The new legislation extends the termination date of the program to September 30, 1981.

EFFECTIVE DATE: July 14, 1978.

ADDRESSES: Emergency and Indemnity Payments Division, ASCS, USDA, Room 4095 South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT:

Robert M. Cook (ASCS), telephone 202-447-7997.

SUPPLEMENTARY INFORMATION: The Beekeeper Indemnity Payment Program is carried out pursuant to section 804 of the Agriculture Act of 1970, 84 Stat. 1382, 7 U.S.C. 135b, as amended by the Agriculture and Consumer Protection Act of 1973, 87 Stat. 237, 7 U.S.C. 135b, and the Food and Agriculture Act of 1977, 91 Stat. 921, 7 U.S.C. 135b. The Food and Agriculture Act of 1977 extended the Beekeeper Indemnity Payment Program through September 30, 1981.

On March 14, 1978, a notice of proposed rulemaking regarding the Beekeeper Indemnity Payment Program regulations was published in the FEDERAL REGISTER (43 FR 10568). Interested persons were given until April 13, 1978, to submit written comments, suggestions, or objections regarding the proposed regulations.

Comments were received from 37 persons concerning the proposal to eliminate payments for moderately damaged colonies. The comments were universally critical of the proposal. After considering these comments, it has been determined that it is in the best interest of the beekeeping industry and of the program to retain payments for moderately damaged colonies in the program.

Two comments were also received concerning the proposal to change the period during which no payments will be made for losses of queen nuclei. The comments were opposed to expanding the period during which no payments would be made from August 15-December 31 to July 1-December 31. However, it has been the experience of the program that large numbers of queen nuclei are not being actively maintained after July 1 as the demand for queens declines sharply after July 1. It has therefore been determined that it is in the best interest of the industry and the program to adopt this proposal as part of the final rule.

Accordingly, 7 CFR part 760, Subpart, Beekeeper Indemnity Payment Program, and the title of the subpart are revised to read as set forth below.

Subpart—Beekeeper Indemnity Payment Program (1978-81)

PROGRAM OPERATIONS

Sec.
760.100 Administration.
760.101 Definitions.
760.102 Indemnity payment.
760.103 Requirements for eligibility.
760.104 Application for payment.
760.105 Proving loss of bees.
760.106 Proving utilization of pesticides.
760.107 Proving nonfault.
760.108 Proving reasonable care.
760.109 Computation of payment.
760.110 Appeals.
760.111 Assignments.
760.112 Instructions
760.113 Limitation of authority.
760.114 Estates and trusts; minors.
760.115 Setoffs.
760.116 Overdisbursement.
760.117 Death, incompetency, or disappearance.
760.118 Records, and inspection thereof.

AUTHORITY. Sec. 804, Pub. L. 91-524, 84 Stat. 1382, as amended by Sec. 1 (27), Pub. L. 93-86, 87 Stat. 237, and Sec. 207, Pub. L. 95-113, 91 Stat. 931 (7 U.S.C. 135b).

PROGRAM OPERATIONS

§ 760.100 Administration.

The beekeeper indemnity payment program is administered by the Agricultural Stabilization and Conservation Service under the supervision and direction of the Deputy Administrator, State and County Operations. In the field, the program is carried out by the State and county ASC committees.

§ 760.101 Definitions.

For the purpose of this subpart, the following terms shall have the meaning specified:

(a) "Apiary" means the place where bees are kept, commonly known as a "bee yard."

(b) "Application period" means any period with respect to which application for payment is made beginning not earlier than January 1, 1978, and ending not later than September 30, 1981.

(c) "ASCS" means the Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(d) "Bee" means the honeybee, Apis mellifera L.

(e) "Beekeeper" means a person who owns and maintains colonies of bees.

(f) "Colony" means a community of bees living together in a hive with a queen.

(g) "Colony destroyed" means a colony in which the kill of bees by pesticides was so severe that the colony will not survive.

(h) "Colony moderately damaged" means a colony so damaged by pesticides as to destroy only the field bees.

(i) "Colony severely damaged" means a colony in which the field bees were killed by pesticides and the colony suffered damage to the brood, but the colony will survive.

(j) "County committee" means the Agricultural Stabilization and Conservation County Committee.

(k) "DASCO" means the Deputy Administrator, State and County Operations, ASCS.

(l) "Person" means an individual, partnership, association, corporation, trust, estate, or other legal entity.

(m) "Pesticide" means an economic poison which was registered pursuant to the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 135–135k), and approved for use by the Federal Government.

(n) "Queen nucleus" means a small colony of bees maintained solely for the purpose of producing queen bees.

(o) "Queen nucleus destroyed" means a queen nucleus in which the kill of bees by pesticides was so severe that the queen nucleus did not survive.

(p) "State committee" means the Agricultural Stabilization and Conservation State Committee.

§ 760.102 Indemnity payment.

An indemnity payment computed in accordance with § 760.109 will be made under this subpart to a beekeeper who has suffered a severe loss of bees as a result of the application of pesticides and who establishes to the satisfaction of the county committee that all requirements of this subpart have been met.

§ 760.103 Requirements for eligibility.

A beekeeper, to be eligible for an indemnity payment, shall file an application for payment with the county committee and establish to the satisfaction of the county committee all of the following:

(1) That during the application period, a loss of bees was suffered.

(2) That the loss of bees was caused solely by the use of pesticides near or adjacent to the apiary, and occurred through no fault of the beekeeper.

(3) That if the beekeeper used pesticides, such use of pesticides in no way contributed to the loss of the bees;

(4) That if the beekeeper had advance knowledge that pesticides were going to be used near or adjacent to the apiary, the beekeeper took reasonable precautions to protect the bees from exposure to pesticides, or, if the beekeeper took no such precautions, that the failure to do so was reasonable under the circumstances;

(5) That after exposure of the bees to pesticides, the beekeeper took reasonable action to minimize the bee loss to the extent that such action was feasible.

(6) That at or about the time a bee loss inspection was first requested during the calendar year, the beekeeper submitted to the county ASCS office, where the headquarters are located, a signed statement specifying the number of colonies and queen nuclei maintained at each apiary and the location of each apiary: *Provided,* however, that this statement was subsequently amended to satisfactorily explain any changes made in such numbers between the date of the original statement and the date of any subsequent inspection of the apiary. The number of colonies and queen nuclei specified in this statement, as amended, shall be the maximum number for which the beekeeper will be eligible to receive an indemnity payment.

§ 760.104 Application for payment.

(a) The beekeeper or a legal representative of the beekeeper shall complete, sign, and file an application for payment, Form ASCS–448 with the county ASCS office serving the area where the beekeeper's headquarters is located.

(b) Application for payment shall be filed not later than April 1 following the year in which the losses occurred. The application shall be postmarked not later than midnight April 1 of such year. An application may be filed after the closing date if the county committee determines that the beekeeper was prevented from filing by such date because of illness or other reason beyond the beekeeper's control. The beekeeper should file only one application per year covering all losses occurring during such calendar year.

(c) The application for payment shall be accompanied by the information required by §§ 760.105–760.109, and such other information as may be reasonably required to enable the county committee to determine the eligibility of the beekeeper to receive an indemnity payment.

§ 760.105 Proving loss of bees.

(a) A beekeeper shall submit to the county committee an executed Form ASCS–448, specifying the number of colonies destroyed, the number of colonies severely damaged, the number of colonies moderately damaged; and the number of queen nuclei destroyed; and evidence of the loss of bees specified in subparagraph (b) of this section.

(b) Such evidence shall be a written report by an ASCS inspector who has observed the loss. Any report under this paragraph shall:

(1) Describe the losses of bees which have been observed by the inspector.

(2) Give full information regarding the loss, including but not limited to the following:

(i) Extent of loss (number of colonies destroyed, severely or moderately damaged, and number of queen nuclei destroyed);

(ii) Approximate date of loss;

(iii) Location of apiary.

(3) Be completed, signed, and dated within a reasonable time following the loss.

(c) If the report required by paragraph (b) of this section is based on inspections of only a sample of the colonies in an apiary, the following guidelines shall be substantially complied with in selecting the samples of colonies to be examined:

(1) Count the colonies in the apiary.

(2) Select the colonies to be included in the sample from all areas of the apiary so as to assure that the sample is representative of conditions in the apiary as a whole. Colonies to be inspected should be selected at random to assure an accurate determination of the extent of loss in the apiary.

(3) Open and thoroughly inspect at least the specified number of colonies for the applicable size of apiary. Apiary of 1–15 colonies, all colonies. Apiary of 16–75 colonies, 15 colonies. Apiary of more than 75 colonies, 20 percent of the colonies.

(d) No change in the degree of loss of bees which occurs after October 1 each year will be recognized and no payment will be made for any loss of queen nuclei which occurs between July 1 and December 31 each year.

§ 760.106 Proving utilization of pesticides.

A beekeeper shall submit to the county committee evidence that the loss of bees occurred as a result of the utilization of pesticides near or adjacent to the apiary. Such evidence may include, but is not limited to:

(a) Reports of chemical tests performed on the bees which were killed.

(b) Records, signed statements, or official reports of pesticide applicators or farmers who either applied pesticides or contracted for their application within the normal forage range of the beekeeper's bees.

(c) Records, signed statements, or official reports of representatives of local canneries or pesticide vendors who supplied pesticides which were used within the normal forage range of the beekeeper's bees.

(d) Records, signed statements, or official reports of local, State or Federal governmental agencies or colleges and universities having verified information with respect to the application of pesticides in the locality where the beekeeper's apiaries were located.

(e) Certification by the person that inspected the bees for pesticide damage that the loss resulted solely from pesticides and not caused by disease, starvation, or neglect.

§ 760.107 Proving non-fault.

A beekeeper shall submit to the county committee (a) a statement signed by the beekeeper stating whether the beekeeper used pesticides, and (b) if the beekeeper did use pesticides, evidence that such use thereof in no way contributed to the loss of the bees.

§ 760.108 Proving reasonable care.

A beekeeper shall submit to the county committee evidence that reasonable care was exercised by the bee-

keeper in connection with the use of pesticides by others. Such evidence shall consist of, but is not limited to, written statements signed by the beekeeper:

(a) Stating whether the beekeeper received advance notice that pesticides were going to be applied near or adjacent to the apiary.

(b) Describing what actions the beekeeper took (if the beekeeper received such notice) to protect the bees from pesticides, or why there was no suitable action that the beekeeper could have taken.

(c) Describing what steps were taken after exposure of the bees to pesticides, to improve the condition of the colonies and to reduce the extent of bee loss, or why there were no suitable steps that could have been taken.

§ 760.109 Computation of payment.

(a) The county committee will determine the amount of the indemnity payment due a beekeeper whom it has determined to be in compliance with the terms and conditions of this subpart. Such payment shall be in the amount of the beekeeper's net loss from losses of bees resulting from application of pesticides, less any indemnification for such loss or payment of any nature which the beekeeper has received through insurance, legal action, or otherwise. The beekeeper's indemnity payment will be computed on the basis of the following rates for losses which occurred since January 1, 1978:

(1) $22.50 for each colony destroyed,

(2) $15.00 for each colony severely damaged,

(3) $7.50 for each colony moderately damaged, and

(4) $7.50 for each queen nucleus destroyed.

(b) Only one payment will be made on a colony for losses occurring during a given calendar year. If more than one loss is suffered by a colony, the beekeeper may claim payment on the most severe loss suffered.

§ 760.110 Appeals.

The Appeal Regulations issued by the Administrator, ASCS, Part 780 of this chapter, shall be applicable to appeals by beekeepers from determinations made pursuant to the regulations in this subpart.

§ 760.111 Assignments.

A beekeeper shall not assign any indemnity payment due or to come due under the regulations in this subpart. Any assignment or attempted assignment of any indemnity payment due or to come due under this subpart shall be null and void.

§ 760.112 Instructions.

DASCO shall cause to be prepared such forms and instructions as are necessary for carrying out the regulations in this subpart. Beekeepers may obtain such forms, including the following, from the county ASCS office: ASCS-448-Beekeeper Indemnity Payment Program Report of Loss on a Colony Basis and Application for Payment.

§ 760.113 Limitation of authority.

(a) County executive directors and State and county committees do not have authority to modify or waive any of the provisions of the regulations in this subpart.

(b) The State committee may take any action authorized or required by the regulations in this subpart to be taken by the county committee when such action has not been taken by the county committee. The State committee may also (1) correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations in this subpart, or (2) require a county committee to withhold taking any action which is not in accordance with the regulations in this subpart.

(c) No delegation herein to a State or county committee shall preclude DASCO or a designee of DASCO from determining any question arising under the regulations in this subpart or from reversing or modifying any determination made by a State or county committee.

§ 760.114 Estates and trusts; minors.

(a) A receiver of an insolvent debtor's estate and the trustee of a trust estate shall, for the purposes of this subpart, be considered to represent an insolvent beekeeper and the beneficiaries of a trust, respectively, and the honeybee losses of the receiver or trustee shall be considered to be the honeybee losses of the persons so represented. Program documents executed by any such person will be accepted only if such person has authority to sign the applicable documents, and such documents are otherwise legally valid.

(b) A minor who is a beekeeper shall be eligible for indemnity payments only if the minor meets one of the following requirements: (1) The rights of majority have been conferred on the minor by court proceedings or by statute; (2) a guardian has been appointed to manage the minor's property and the applicable program documents are signed by the guardian; or (3) a bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 760.115 Setoffs.

(a) If any indebtedness of the beekeeper to any agency of the United States is listed on the county claims control record, indemnity payments due the beekeeper under the regulations in this part shall be applied, as provided in the Secretary's Setoff Regulations, Part 13 of this title, to such indebtedness.

(b) Compliance with the provisions of this section shall not deprive the beekeeper of any right such person would otherwise have to contest the validity of the indebtedness involved in the setoff action, either by administrative appeal or by legal action.

§ 760.116 Overdisbursement.

A beekeeper shall be personally liable for repayment of the amount by which any indemnity payment disbursed to the beekeeper exceeds the amount of such payment authorized under the regulations in this subpart.

§ 760.117 Death, incompetency, or disappearance.

In the case of the death, incompetency, or disappearance of any beekeeper who is entitled to an indemnity payment, such payment may be made to the person or persons specified in the regulations contained in Part 707 of this chapter. The persons requesting such payment shall file Forms ASCS-325, "Application For Payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent," as provided in that part.

§ 760.118 Records, and inspection thereof.

The beekeeper, and any other person who furnished information to such beekeeper or to the county committee to enable the beekeeper to receive an indemnity payment under this subpart, shall maintain any books, records, and accounts supporting any information furnished to the county committee, for 3 years following the end of the year during which the application for payment was filed. The beekeeper or any other person who furnished such information to the beekeeper or to the county committee shall permit authorized representatives of the Department of Agriculture and the General Accounting Office, during regular business hours, to inspect, examine, and make copies of such books, records, and accounts.

NOTE.—The reporting and/or recordkeeping requirement contained herein has been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

Issued at Washington, D.C. on June 29, 1978.

STEWART N. SMITH
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 78-19283 Filed 7-13-78; 8:45 am]

[3410-02]

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Lemon Reg. 154, Lemon Reg. 153, Amendment 1]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period July 16-22, 1978, and increases the quantity of such lemons that may be so shipped during the period July 9-15, 1978. Such action is needed to provide for orderly marketing of fresh lemons for the periods specified due to the marketing situation confronting the lemon industry.

DATES: The regulation becomes effective July 16, 1978, and the amendment is effective for the period July 9-15, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: *Findings.* Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under this marketing order, and upon other information, it is found that the limitation of handling of lemons, as hereafter provided, will tend to effectuate the declared policy of the act.

The committee met on July 11, 1978, to consider supply and market conditions and other factors affecting the need for regulation, and recommended quantities of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons continues strong.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

1. § 910.454 Lemon Regulation 154.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period July 16, 1978, through July 22, 1978, is established at 300,000 cartons.

(b) As used in this section, "handled" and "carton(s)" mean the same as defined in the marketing order.

2. Paragraph (a) of § 910.453 Lemon Regulation 153 (43 FR 29265) is amended to read as follows: "The quantity of lemons grown in California and Arizona which may be handled during the period July 9, 1978, through July 15, 1978, is established at 325,000 cartons."

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.)

Dated: July 12, 1978.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division Agricultural Marketing Service.

[FR Doc. 78-19718 Filed 7-13-78; 12:19 pm]

[3410-02]

PART 916—NECTARINES GROWN IN CALIFORNIA

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

Expenses, Rates of Assessment, and Carryover of Unexpended Funds

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rules.

SUMMARY: These regulations authorize expenses and rates of assessment for the 1978-79 fiscal period, to be collected from handlers to support activities of the committees which locally administer the Federal marketing orders covering nectarines, fresh pears, plums, and peaches grown in California.

DATES: Effective March 1, 1978, through February 28, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: *Findings.* Pursuant to marketing order Nos. 916 and 917, both as amended (7 CFR Parts 916 and 917), respectively, regulating the handling of nectarines, fresh pears, plums, and peaches grown in California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the committees, established under these marketing orders, and upon other information, it is found that the expenses and rates of assessment, as hereafter provided, will tend to effectuate the declared policy of the act.

MARKETING ORDER 916

§ 916.217 Expenses, rate of assessment, and carryover of unexpended funds.

(a) Expenses that are reasonable and likely to be incurred by the Nectarine Administrative Committee during fiscal year March 1, 1978, through February 28, 1979, will amount to $1,409,461.

(b) The rate of assessment for said year payable by each handler in accordance with § 916.41 is fixed at $0.08 per No. 22D standard lug box of nectarines, or its equivalent in other containers or in bulk.

(c) Unexpended funds in excess of expenses incurred during fiscal year ended February 28, 1978, shall be carried over as a reserve in accordance with § 916.42.

MARKETING ORDER 917

§ 917.220 Expenses and rate of assessment.

(a) Expenses that are reasonable and likely to be incurred by the Pear Commodity Committee during fiscal year March 1, 1978, through February 28, 1979, will amount to $601,286.

(b) The rate of assessment for said year payable by each handler in accordance with § 917.37 is fixed at $0.125 per No. 29B special lug box of pears, or its equivalent in other containers or in bulk.

§ 917.221 Expenses, rate of assessment, and carryover of unexpended funds.

(a) Expenses that are reasonable and likely to be incurred by the Plum Commodity Committee during fiscal year March 1, 1978, through February 28, 1979, will amount to $1,404,572.

(b) The rate of assessment for said year payable by each handler in accordance with § 917.37 is fixed at $0.105 per No. 22D standard lug box of plums, or its equivalent in other containers or in bulk.

(c) Unexpended funds in excess of expenses incurred during fiscal year ended February 28, 1978, shall be carried over as a reserve in accordance with § 917.38.

§ 917.222 Expenses and rate of assessment.

(a) Expenses that are reasonable and likely to be incurred by the Peach Commodity Committee during fiscal year March 1, 1978, through February 28, 1978, will amount to $1,192,097.

(b) The rate of assessment for said year payable by each handler in accordance with § 917.37 is fixed at $0.08 per No. 22D standard lug box of peaches, or its equivalent in other containers or in bulk.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), as the orders require that the rates of assessment for a particular fiscal year shall apply to all assessable nectarines, pears, plums, and peaches handled from the beginning of such year which began March 1, 1978. To enable the committees to meet fiscal obligations which are now accruing, approval of the expenses and assessment rates are necessary without delay. Handlers and other interested persons were given an opportunity to submit information and views on the expenses and assessment rate at an open meeting of each committee. It is necessary to effectuate the declared purposes of the act to make these provisions effective as specified.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.)

Dated: July 10, 1978.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 78-19447 Filed 7-13-78; 8:45 am]

[4410-10]

Title 8—Aliens and Nationality

CHAPTER I—IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

PART 231—ARRIVAL-DEPARTURE MANIFESTS AND LISTS; SUPPORTING DOCUMENTS

Submission of Aircraft/Vessel Reports (Forms I-92) for Direct Flights Between the United States and Canada

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations of the Immigration and Naturalization Service to require submission of Forms I-92 (Aircraft/Vessel Reports) for passengers on direct flights between the United States and Canada. The amendments are being made at the request of the Department of Transportation and Federal Aviation Administration to enable them to gather complete statistics on this air travel in order to effectively implement the airport development program.

EFFECTIVE DATE: July 14, 1978.

FOR FURTHER INFORMATION CONTACT:

James G. Hoofnagle, Jr., Instructions Officer, Immigration and Naturalization Service, 425 I Street NW., Washington, D.C. 20536, telephone 202-376-8373.

SUPPLEMENTARY INFORMATION: Existing Service regulations at 8 CFR 231.1(b) and 8 CFR 231.2(b) provide that air carriers do not have to submit Forms I-92 (Aircraft/Vessel Reports) on direct flights between the United States and Canada which either originate in Canada and terminate in the United States or which depart the United States on a direct flight which terminates in Canada. These amendments will require Forms I-92 to be submitted on these United States-Canadian flights.

The amendments are being made at the request of the Department of Transportation and Federal Aviation Administration, in order to assist those agencies in the implementation of the airport development program. In implementing this program, the DOT and the FAA must have accurate statistics on air carrier activity. However, this is not presently possible because no statistics are provided for direct air travel between Canada and the United States, since Forms I-92 are not now collected on direct United States-Canadian flights. This absence of information creates a considerable statistical void because Canadian air carriers account for an estimated 15-20 percent of the total foreign air carrier activity in the United States.

In order to obtain this information which is an important element in the United States' airport development program, the Service is amending its regulations to require preparation and submission of Forms I-92 for direct flights between the United States and Canada which originate in Canada and or terminate in the United States or which depart the United States and terminate in Canada.

It should be noted that many airlines now submit these reports on direct U.S.-Canada flights in error. Thus, a change in the regulation should not cause a significant increase in the number of reports being submitted to the Service.

Finally, 8 CFR 231.1(b) and 231.2(b) have been redrafted for purposes of clarity.

In light of the foregoing, the following amendments are hereby made to Chapter I of Title 8 of the Code of Federal Regulations.

Section 231.1(b) is revised to read as follows:

§ 231.1 Arrival manifests for passengers

* * * * *

(b) *Aircraft* [*arrivals*]. A manifest in the form of a separate arrival-departure card (Form I-94) prepared for and presented by each alien passenger on board must be presented to an immigrant inspector by the captain or agent of an aircraft arriving from a foreign place or from an outlying possession of the United States. This manifest requirement does not apply to passengers on a direct flight from Canada to the United States which originated in Canada or to passengers on a direct flight from the British Virgin Islands to the United States Virgin Islands, which originated in the British Virgin Islands. A properly completed Form I-92 (Aircraft/Vessel Report), recording the total number of passengers (including United States citizens) that embarked at each port en route to the United States shall be presented by the captain to the immigrant inspector at the first port of arrival in the United States. These Forms I-92 must be presented for direct flights originating in Canada and terminating in the United States. They do not have to be submitted for direct flights originating in the British Virgin Islands and terminating in the United States Virgin Islands. An arrival-departure card is not required for an arriving, through-flight passenger at a United States port from which he will depart directly to a foreign place or an outlying possession of the United States on the same flight, provided the number of such through-flight passengers is noted on the Bureau of Customs Form 7507 or on the International Civil Aviation Organization's General Declaration and such passengers remain during the ground time in a separate area under the direction and control of the Service.

* * * * *

Section 231.2(b) is revised to read as follows:

§ 231.2 Departure manifests for passengers

* * * * *

(b) *Aircraft* [*departures*]. The captain or agent of every aircraft depart-

ing from the United States for a foreign place or an outlying possession of the United States must present a manifest of all alien passengers on board. This manifest requirement does not apply to a direct flight from the United States terminating in Canada or a direct flight from the United States Virgin Islands terminating in the British Virgin Islands. A properly completed Form I-92 (Aircraft/Vessel Report) setting forth each port of disembarkation and the number of passengers (including United States citizens) destined thereto, shall be submitted to the immigration officer at the last port of departure in the United States. Form I-92 reports are required to be submitted for direct flights from the United States terminating in Canada. Forms I-92 do not have to be presented for direct flights from the United States Virgin Islands which terminate in the British Virgin Islands. Aircraft departing on regularly scheduled flights from the United States may defer presentation for a period not in excess of 48 hours. The manifest shall be in the form of a Bureau of Customs Form 7507 or the International Civil Aviation Organization's General Declaration, a Form I-92 and a separate arrival-departure card (Form I-94) for each alien passenger, except a through flight passenger for whom an arrival-departure card was not prepared upon arrival. An alien nonimmigrant departing on an aircraft proceeding directly to Canada on a flight terminating in that country should surrender any Form I-94 in his/her possession to the airline agent at the port of departure or to the Canadian immigration officer at the port of arrival in that country.

* * * * *

(Sec. 103; 8 U.S.C. 1103)

These amendments are published pursuant to section 552 of Title 5 of the United States Code (80 Stat. 383), as amended by Pub. L. 93-502 (88 Stat. 1561), and the authority contained in section 103 of the Immigration and Nationality Act (8 U.S.C. 1103), 28 CFR 0.105(b), and 8 CFR 2.1. Compliance with the provisions of section 553 of Title 5 of the United States Code as to notice of proposed rulemaking and delayed effective date is unnecessary in this instance because the amendments contained in this order relate to agency procedure.

Effective date: These amendments become effective on July 14, 1978.

Dated: July 11, 1978.

LEONEL J. CASTILLO,
Commissioner of Immigration and Naturalization.

[FR Doc. 78-19460 Filed 7-13-78; 8:45 am]

[3410-34]

Title 9—Animals and Animal Products

CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER D—EXPORTATION AND IMPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

Change in Disease Status of Dominican Republic Because of African Swine Fever

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document designates the Dominican Republic as a country in which African swine fever, a contagious and infectious disease of swine, exists. Notice has been received that an outbreak of African swine fever has occurred in the Dominican Republic. The intended effect of this amendment is to restrict the entry into the United States of pork and pork products from the Dominican Republic, in order to protect domestic swine.

EFFECTIVE DATE: July 11, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. James D. Roswurm, USDA, APHIS, VS, Room 819, Federal Building, Hyattsville, Md. 20782, 301-436-8499.

SUPPLEMENTARY INFORMATION: African swine fever is potentially the most dangerous and destructive of all communicable swine diseases. The causative virus of African swine fever is highly virulent and may be present in pork and pork products originating in countries where the disease exists. The only known practical method of destroying the disease virus in pork and pork products is by heat treatment.

The Department has been informed that African swine fever exists in the Dominican Republic. Therefore, this document amends § 94.8 of the regulations (9 CFR 94.8), which designates those countries where African swine fever exists, to include the Dominican Republic. This designation restricts the entry into the United States of pork and pork products from the Dominican Republic to pork and pork products which have been commercially sterilized by heat in hermetically sealed containers, or which are allowed controlled entry into the United States for further processing by heat.

Accordingly, Title 9, Part 94, Code of Federal Regulations is hereby amended in the following respect:

§ 94.8 [Amended]

In § 94.8, at the end of the introductory paragraph, the name of the Dominican Republic is added after the reference to "Cuba" and before "France."

(Sec. 2, 32 Stat. 792, as amended (21 U.S.C. 111); 37 FR 28464, 28477; 38 FR 19141.)

This amendment is of an emergency nature and must be made effective immediately to protect domestic swine against the introduction of African swine fever from the Dominican Republic. It excludes in transit shipments of pork and pork products that are aboard a carrier moving to the United States at the time of issuance hereof. Such in transit shipments, upon arrival in the United States, shall either be allowed entry or be disposed of only under such specific requirements and in such a manner as the Administrator may determine, in each specific case, to be necessary and adequate to safeguard against the introduction or dissemination of African swine fever into the United States. It does not apear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendment are unnecessary and contrary to the public interest, and good cause is found for making it effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 11th day of July 1978.

NOTE.—The Animal and Plant Health Inspection Service has determined that this document does not contain a major proposal requiring the preparation of an inflation

impact statement under Executive Order 11821 and OMB Circular A-107.

M. T. GOFF,
Acting Deputy Administrator,
Veterinary Services.

[FR Doc. 78-19510 Filed 7-13-78; 8:45 am]

[7590-01]

Title 10—Energy

CHAPTER I—NUCLEAR REGULATORY COMMISSION

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

Advisory Committee on Reactor Safeguards

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: This amendment of the Commission's regulation, Statement of Organization and General Information, revises the description of the functions of the Advisory Committee on Reactor Safeguards (ACRS) which was transferred to the Nuclear Regulatory Commission by the Energy Reorganization Act of 1974. The revision adds language to clarify that, upon request from the Department of Energy (DOE) the ACRS performs reviews, provides reports, and advises DOE with regard to the hazards of DOE nuclear activities and facilities.

EFFECTIVE DATE: July 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Gerald L. Hutton, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, 301-492-7211.

SUPPLEMENTARY INFORMATION: Section 1.20 of the Commission's regulation, Statement of Organization and General Information, 10 CFR Part 1, describes the functions of the Advisory Committee on Reactor Safeguards (ACRS) which was transferred to the Nuclear Regulatory Commission by the Energy Reorganization Act of 1974. The revision adds language to § 1.20 to clarify that, upon requests from the Department of Energy (DOE) the ACRS performs reviews, provides reports, and advises DOE with regard to the hazards of DOE nuclear activities and facilities.

Because this amendment relates solely to matters of agency management and procedure, notice of proposed rulemaking and public procedure thereon are not required by section 553 of title 5 of the United States Code, and the amendment may be made effective upon publication in the FEDERAL REGISTER.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended and sections 552 and 553 of title 5 of the United States Code, the following amendment to Title 10, Chapter I, Code of Federal Regulations, Part 1, is published as a document subject to codification.

Section 1.20 of 10 CFR Part 1 is revised to read as follows:

§ 1.20 Advisory Committee on Reactor Safeguards.

The Advisory Committee on Reactor Safeguards was established by Section 29 of the Atomic Energy Act of 1954, as amended, and transferred to the NRC pursuant to the Energy Reorganization Act of 1974, as amended. The Committee reviews safety studies, and applications for construction permits and operating licenses for production and utilization facilities, and makes reports thereon; advises the Commission with regard to the hazards of proposed or existing nuclear facilities and the adequacy of proposed reactor safety standards; and reviews matters specifically referred to it by the Commission, including generic issues and proposed amendments or changes to facility construction permits or operating licenses. Similarly, upon request from the Department of Energy (DOE) the Committee performs reviews, provides reports, and advises DOE with regard to the hazards of DOE nuclear activities and facilties. The Committee on its own initiative may conduct reviews of specific generic matters or nuclear facility safety-related items.

(Sec. 161, Pub. L. 83-703, 68 Stat. 948 (42 U.S.C. 2201); sec. 201, Pub. L. 93-438, 88 Stat. 1234 (42 U.S.C. 5841).)

Dated at Bethesda, Md. this 6th day of July 1978.

For the Nuclear Regulatory Commission.

LEE V. GOSSICK,
Executive Director
for Operations.

[FR Doc.78-19586 Filed 7-13-78; 8:45 am]

[8010-01]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Rel. Nos. 34-14942, IC-10313; File No. S7-654]

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

Securities Confirmations

AGENCY: Securities and Exchange Commission.

ACTION: Rule amendment; postponement of effective date of rule.

SUMMARY: The Commission is postponing until December 18, 1978, the effective date of its rule prescribing delivery and disclosure requirements for confirmations sent to customers by brokers and dealers. The confirmation rule was to become effective on August 1, 1978, with the exception of certain paragraphs which had previously become effective on June 1, 1977. The Commission is postponing the effective date in order to coordinate implementation of the new rule with the possible adoption of amendments to that rule currently under consideration. This postponement of the effective date also requires a technical amendment to the text of the rule.

EFFECTIVE DATE: July 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Jeffrey L. Steele, Esq., Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549, 202-755-7587.

SUPPLEMENTARY INFORMATION: The Commission today announced the postponement of the effective date of rule 10b-10 (17 CFR 240.10b-10) until December 18, 1978, with the exception of the several paragraphs of the rule which became effective on June 1, 1977. The Commission adopted rule 10b-10 under the Securities Exchange Act of 1934 (the "Act") on May 5, 1977,[1] and, with the exception of those paragraphs which became effective on June 1, 1977, the rule was to become effective on January 1, 1978. Subsequently, the Commission post-

[1] Securities Exchange Act Release No. 13508 (May 5, 1977), 41 FR 25318 (May 17, 1977).

poned until August 1, 1978 the rule's effective date. [2]

The Commission announced when it adopted rule 10b-10 that it intended to propose amendments to rule 10b-10, which it subsequently did on June 23, 1977. [3] Those proposed amendments remain under consideration, and postponement of the August 1, 1978, effective date will permit the Commission additional time to consider those amendments and will allow both rule 10b-10 and any of the amendments adopted to become effective at one time. A single effective date for the rule as adopted and any amendments to be adopted will minimize any burden on brokers and dealers who must revise printed confirmation forms, computer programs, and internal procedures in order to comply with the new confirmation requirements. Rule 15c1-4 (17 CFR 240.15c1-4), which currently prescribes confirmation delivery and disclosure requirements, will remain in effect until December 18, 1978.

AMENDMENT TO RULE 10b-10

This change in the effective date also requires a technical amendment to rule 10b-10, to reflect the fact that rule 15c1-4 will remain effective until December 18. Paragraph (b) of rule 10b-10 currently provides that brokers and dealers effecting transactions pursuant to qualified "periodic" plans may send to customers quarterly statements in lieu of the "written notification" described in paragraph (a) of rule 15c1-4 (until August 1, 1978) and paragraph (a) of rule 10b-10 (after that date). By postponing the effective date of rule 10b-10 until December 18, 1978, it has become necessary to amend the August 1, 1978, date that appears in paragraph (b) of the rule. This amendment is only technical in nature and imposes no new requirements upon brokers and dealers.

For the reasons stated above and pursuant to the Administrative Procedure Act (5 U.S.C. 551 et seq.), the Commission finds for good cause that notice and public procedure on this amendment to rule 10b-10 is both impracticable and unnecessary and that there is good cause for making this technical amendment to the rule effective immediately. The Commission also finds that adoption of this amendment to rule 10b-10 does not impose any burdens on competition that are not necessary or appropriate in furtherance of the purposes of the act.

STATUTORY BASIS

The Securities and Exchange Commission, acting pursuant to the act, and particularly sections 3, 9, 10, 11, 15, 17, and 23 thereof (15 U.S.C. 78c, 78i, 78k, 78k, 78o, 78q, and 78w) hereby postpones until December 18, 1978, the effective date of paragraph (a) of section 240.10b-10 and amends paragraph (b) of section 240.10b-10 of title 17 of the Code of Federal Regulations to reflect that delay in the effective date.

17 CFR 240.10b-10 is amended to read as follows:

§ 240.10b-10 Confirmations of transactions.

* * * * *

(b) A broker or dealer may effect transactions for or with the account of a customer without giving or sending to such customer the written notification described in paragraph (a) of this section (until December 18, 1978, § 240.15c1-4(a)) if

* * * * *

By the Commission.

Dated: July 7, 1978.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-19421 Filed 7-13-78; 8:45 am]

[2] Securities Exchange Act Release No. 14573 (Mar. 16, 1978), 43 FR 11981 (Mar. 23, 1978).

[3] Securities Exchange Act Release No. 13661 (June 23, 1977), 42 FR 33348 (June 30, 1977).

[1505-01]

Title 20—Employees' Benefits

CHAPTER III—SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[Regulation No. 16]

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED

Subpart K—Income and Exclusions

UNEARNED INCOME, ONE-THIRD REDUCTION FOR LIVING IN ANOTHER PERSON'S HOUSEHOLD

Correction

In FR Doc. 78-18708, appearing at page 29281 in the issue for Friday, July 7, 1978, the last line of the "EFFECTIVE DATE" paragraph, now reading "August 7, 1978.", should read, "September 8, 1978."

[4110-03]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER A—GENERAL

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

Toxicology Advisory Committee; Termination

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: In accordance with the public advisory committee procedures (21 CFR 14.55(b)), this document announces the termination of the Toxicology Advisory Committee and amends the regulation listing the standing advisory committees. The committee was terminated on June 19, 1978 because it was no longer needed.

EFFECTIVE DATE: July 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Jeffrey A. Staffa, Office of Health Affairs (HFY-31), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4490.

SUPPLEMENTARY INFORMATION: The Toxicology Advisory Committee reviewed and evaluated available data relating to the safety of chemicals in foods, drugs, cosmetics, and medical devices. It advised on the safety of specific human drugs, animal drugs, color and food additives, cosmetic components and components of devices, and recommended the development of standardized methodologies for the toxicity testing of such materials.

The Committee is no longer needed, however, because its usefulness has been served. On June 19, 1978, the Toxicology Advisory Committee was abolished by the Secretary, Department of Health, Education, and Welfare, as the Commissioner of Food and Drugs requested.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under authority delegated to the Commissioner (21 CFR 5.1), Part 14 is amended in § 14.100 *List of standing advisory committees* by deleting paragraph (a)(3) and marking it reserved as follows:

§ 14.100 List of standing advisory committees.

(a) * * *

(3) [Reserved]

Effective date. Since this is a technical conforming amendment to Part 14 (21 CFR Part 14), the Commissioner finds there is good cause for the rule to be effective July 14, 1978.

(Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)).)

Dated: July 6, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-19230 Filed 7-13-78; 8:45 am]

[4110-03]

SUBCHAPTER B—FOOD FOR HUMAN CONSUMPTION

[Docket No. 76N-0152]

PART 155—CANNED VEGETABLES

Canned Tomatoes; Confirmation of Effective Date of Final Regulation Amending Standards of Identity and Quality

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a final regulation that amended the standards of identity and quality for canned tomatoes and makes certain editorial changes for clarification.

EFFECTIVE DATE: Compliance with the final regulation may have begun August 16, 1976, and all products initially introduced into interstate commerce on or after July 1, 1979, shall fully comply.

FOR FURTHER INFORMATION CONTACT:

Prince G. Harrill, Bureau of Foods (HFF-411), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-245-1164.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration issued a final regulation in the FEDERAL REGISTER of June 16, 1976 (41 FR 24342) to amend the standards of identity and quality for canned tomatoes (21 CFR 155.190 (a) and (b), formerly 21 CFR 53.40 and 53.41, respectively, prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)) in consideration of the "International Standard for Canned Tomatoes" submitted to the United States by the Food and Agriculture Organization/World Health Organization Codex Alimentarius Commission. The final regulation established requirements for stewed tomatoes and provided for the use of tomato juice as an optional packing medium and "whole and pieces" and "pieces" as optional styles. It also required the label declaration of all optional ingredients and other changes that to the extent practical make the U.S. standards consistent with the Codex standards for canned tomatoes.

Three trade associations filed objections to the final regulation. Objections included the following: a request for a hearing; a request that the Commissioner stay the effective date of several provisions and make editorial revisions to several others; and a request that the Commissioner reconsider several provisions that were not adopted in the final regulation. Two requests were later received for an extension of the January 1, 1978 labeling compliance date. A discussion of the objections and request for changes follows below.

LIMIT ON USE OF CALCIUM SALTS TOO LOW

Two associations objected to the provision in § 155.190(a)(2)(i) that limits the optional use of calcium salts to firm tomato dices, slices, and wedges such that the total calcium level in the finished food is not greater than 0.08 percent. They argued that the 0.08 percent level was too low to adequately firm the cut styles of tomatoes.

Both associations later withdrew their objections to the provision. Consequently, the Commissioner is retaining the provision in § 155.190(a)(2)(i) that limits the calcium salts to 0.08 percent calcium in tomato dices, slices, and wedges.

LABELING OF CERTAIN STYLES OF TOMATOES

Two of the association objected to the mandatory label designation of the styles "whole and pieces" and "pieces" as required by § 155.190 (a)(5)(ii)(*d*). One requested a hearing to resolve the issue. The associations argued that the requirement is inconsistent with the Codex standard as well as the FDA standard of identify for canned tomatoes that has been in effect since 1970. They said the existing standard permits tomatoes failing to meet specified criteria for wholeness to be labeled simply "tomatoes" ("stewed tomatoes," where applicable). They asserted that no opportunity was given for public comment, as labeling requirements for the two styles were not in the proposed standard published in the FEDERAL REGISTER of April 29, 1974 (39 FR 14971). They further asserted that consumers would be confused by the new designations and may erroneously conclude that a product labeled "whole and pieces" is inferior to the product previously called "tomatoes." The associations pointed out that the terms for different styles are not defined in the standard of identify and that processors have no guidelines to determine which style designation to use on labels for tomatoes. They added that, in addition to consumer confusion, the change from current industry practice will cause unnecessary labeling and marketing costs.

The Commissioner has reviewed the question about labeling these styles of tomatoes. The labeling requirement was not provided for in the April 29, 1974, proposal; consequently, consumers and other interested persons have not had an opportunity to comment on the change. The Commissioner finds merit in the argument that it could create consumer confusion and add unnecessary costs to industry to require now the declaration of these styles on the label of a product that for years has been marketed as tomatoes. Therefore, the Commissioner is deleting the labeling requirement for "whole and pieces" and "pieces" from the standard. In view of this change, and since the regulation did not set forth a definition describing these styles, he is also deleting the provision for them in § 155.190(a)(4) below. Consequently, the requested hearing is unnecessary.

SIEVE SIZE FOR DETERMINING DRAINED WEIGHT

One association objected to the size of the sieve designated in § 155.190 (b)(2)(i) for determining the drained weight of stewed tomatoes. It said that as much as 10 percent of the food in stewed tomatoes may be vegetable ingredients, and these ingredients would fall through the openings of the coarse screen and not be measured as drained weight. It suggested that a No. 8 screen (with square openings of 0.0937 inch) should be used.

The Commissioner recognizes that the sieve designated in § 155.190 (b)(2)(i) for determining the drained weight for canned tomatoes, including stewed tomatoes, has openings that may allow some vegetable ingredients to fall through the screen and that § 155.190(b)(1) sets forth the same drained weight requirement for stewed tomatoes as it does for canned tomatoes. But the objector has not identified or provided any information to show that stewed tomatoes drained on the currently required No. 2 sieve will not meet the 50 percent minimum drained weight requirement. Furthermore, as an integral part of the objection, the substitution of a No. 8 screen for a No. 2 screen was sought. If a No. 8 screen were substituted, small-sized tomato pieces would not fall through the screen and would be counted as drained weight. At present these small tomato pieces are not considered part of the drained weight when a No. 2 screen is used. The current provision is aimed at insuring that the food contains a minimum amount of whole or fairly discrete pieces of tomato and vegetable ingredients. The objection provided no information in support of any particular drained weight using a

No. 8 size screen, or any other information to show that the No. 8 screen provides a drained weight that adequately serves the consumer's interest. The objector has failed to show that the information submitted in the objection would be adequate to justify a factual determination or a change in the regulation in the way sought. An evidentiary hearing will be granted only if it has been shown to be necessary to resolve disputed issues of fact that determines the outcome. In the absence of such supporting information the Commissioner is denying the objection and is retaining the requirements set forth in the final regulation. But he will consider a petition proposing to amend § 155.190(b) to provide for the use of a different sieve size for determining drained weight for stewed tomatoes if adequately supported and if meaningful drained weight data obtained from various lots of stewed tomatoes using a No. 8 size sieve are provided.

No Provision for Use of Starch and Liquid Sweeteners

An association of ingredient suppliers that responded to the proposal by requesting that food starch modified and liquid sweeteners be provided for as optional ingredients in stewed tomatoes renewed its request for the inclusion of these substances in the standard and asked the Commissioner to reconsider his decision to delete the provision for the use of starch from the final regulation. The association asserted that starch is needed for technological reasons in making a stewed tomato product. It expressed the opinion that the U.S. standard should be completely harmonious with the Codex standard and that it cannot be unless it includes a provision for the use of starch. In addition, the association suggested that food starch modified is more satisfactory than starch for use as a stabilizer and can be used at a lower level. The association said that, before the next meeting of the Codex Processed Fruit and Vegetable Committee, its industry expects to request that a provision for the use of food starch modified be included in the Codex standard.

As regards liquid sweeteners, the association said its suggestion to use liquid sweeteners "was based on modern technology to avoid the handling of dry products." It said the amount of sweeteners included is "de minimus" since it is restricted to a sufficient amount to counteract the tartness of added organic acids. The association recognized that the FDA policy has been to consider sweeteners that contain water inappropriate for use in products where water is not normally added as an ingredient. But it said that it did not believe that past policy should prevent FDA from adopting a change that would encourage economic and technical improvement.

The Commissioner concludes that the information furnished by the objector failed to overcome the concerns that he expressed in the preamble of the final regulation. These concerns were that the use of starches may mislead consumers and that to his knowledge they are not currently being used by U.S. manufacturers of stewed tomatoes. If the association believes that labeling can prevent the consumer from being misled about the use of starch and its replacement of tomato and vegetable ingredients, it should file a petition to seek a change in the regulation. Any change to permit the use of starch should only be made after public notice and opportunity for comment.

The Commissioner also stated that a liquid sweetener is not an appropriate ingredient for use in canned tomatoes and/or stewed tomatoes because the water contained in the sweetener would dilute the products. In the absence of a positive showing that adding the starches and liquid sweeteners would be in the interest of consumers, he is retaining the relevant provisions as set forth in the final regulation.

Differences Between Packing Media

One of the associations requested "that a distinction be made" between the packing medium "liquid strained from mature tomatoes" provided for in § 155.190(a)(3)(iii) (for which no labeling requirements are included) and the packing medium "tomato juice" provided for in § 155.190(a)(3)(iv) (which may be declared on the label as tomato juice). It stated that the provision is not clear in light of a statement made in the preamble of a document published in the Federal Register of February 27, 1970 (35 FR 3804) indicating that the canned tomato standard already provided for tomato juice as an optional ingredient.

In researching the records to determine whether there is a difference between "the liquid strained from mature tomatoes" and "tomato juice," the Commissioner found that the 1970 statement referred to by the comment was based on a Trade Correspondence (TC 57), dated February 15, 1940, indicating that FDA issued an opinion that "the liquid strained from mature tomatoes" was the standardized product "tomato juice" (21 CFR 156.145) and that it may be declared on the label as "with added tomato juice". Consequently, the Commissioner concludes that there was a duplication of packing media in the final regulation published in the Federal Register of June 16, 1976. Therefore, the duplicative provision is deleted for the packing medium "tomato juice" in § 155.190(a)(3)(iv), and § 155.190(a)(5)(iii)(c) is amended to provide for the optional label declaration of the words "in tomato juice" when the optional packing medium provided for in § 155.190(a)(3)(iii) is used.

What Are "Natural" Vegetable Ingredients

Several associations asked that the term "natural" used in the phrase "natural vegetable ingredients" in § 155.190(a)(2)(vii) be defined. One association said some interpretations of "natural" would not include dehydrated vegetables. It said most manufacturers of stewed tomatoes commonly use dehydrated vegetables in their products.

The Commissioner recognizes that the § 155.190(a)(2)(vii) provision is not clear whether or not dehydrated vegetables are included within the term "natural." Further, he is aware that different meanings or uses of the term may cause confusion. Since it was the intent of the provision to include the use of fresh, canned, frozen, and moisture-reduced vegetable ingredients, § 155.190(a)(2)(vii) is revised to indicate that the use of these forms of vegetables is permitted in stewed tomatoes, and the term "natural" is deleted from § 155.190 (a)(2)(vii) and (a)(5)(ii)(b).

"Whole" Tomato Redefined

Two assocations pointed out a misstatement in § 155.190(a)(5)(iii)(*a*), the provision that specifies the conditions under which a label designation of "whole" may be used.

The requirement in the standard of identity published in the June 16, 1976, Federal Register stated that the word "whole" may be included as part of the name if the tomato ingredient present is whole or almost whole and the drained weight is not less than 80 percent of the finished food. The provision should have specified that 80 percent of the drained weight must consist of "whole" or "almost whole" tomatoes if the word "whole" is used as part of the name. The error was corrected in the Federal Register of March 28, 1978 (43 FR 12858).

Requests for Extension of Compliance Date

Two comments requested an extension of the January 1, 1978, labeling compliance date. One association said that unresolved objections are still pending and that orders for labels are now being placed for the 1977 pack of canned tomatoes. The association indicated that 18 months are needed to incorporate the labeling changes required by the amendments.

An ingredient manufacturer submitted the other request for an extension of time. The manufacturer makes a line of plain and combination ingredi-

ent salt tablets, including some containing calcium chloride and/or calcium sulfate, that are used in canned tomatoes. The current standard allows calcium salts to be declared as "trace of calcium salts added." Such labeling allows the canner to use approved calcium salts interchangeably without need for label change, but the revised standard requires the calcium salts used to be declared on the label by their common or usual name. The manufacturer said that because of the severe weather conditions in this country in 1976, extra time is required to use the excess inventory of tablets and labels.

The Commissioner notes that there are no unresolved objections remaining, but concludes that it is reasonable to extend the compliance date to July 1, 1979. This will give manufacturers who may have made label changes consistent with the final regulation as published in the FEDERAL REGISTER of June 16, 1976 (41 FR 24342), the opportunity to exhaust their inventory of such labels.

CLARIFICATION OF PARENTHETICAL EXPRESSIONS

A comment requested clarification of the parenthetical expressions in § 155.190(b)(1) (iii) and (iv). It said that the way the parentheses were used to express the English equivalent to the metric system for peel and blemish tolerances was confusing.

The Commissioner agrees, and he is revising § 155.190(b)(1) (iii) and (iv) to eliminate the confusion.

In consideration of the comments received and other relevant information, the Commissioner concludes that it will promote honesty and fair dealing in the interest of consumers to amend the standards of identity and quality for canned tomatoes, as set forth below.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner (21 CFR 5.1), Part 155 is amended in § 155.190 by revising paragraphs (a)(2)(vii), (a)(3) (iii) and (iv), (a)(4), (a)(5)(ii) (*b*) and (*d*) and (iii) (*a*) and (*c*), and (b)(1) (iii) and (iv), to read as follows:

§ 155.190 Canned tomatoes.

(a) * * *

(2) * * *

(vii) Vegetable ingredients such as onion, peppers, and celery, that may be fresh or preserved by physical means, in a quantity not more than 10 percent by weight of the finished food.

(3) * * *

(iii) The liquid strained from mature tomatoes (tomato juice).

(iv) Tomato paste, or tomato puree, or tomato pulp complying with the compositional requirements of §§ 155.191 and 155.192.

(4) *Styles.* (i) Whole.

(ii) Diced.

(iii) Sliced.

(iv) Wedges.

(5) * * *

(ii) * * *

(*b*) A declaration of any added spice, seasoning, or vegetable ingredient that characterizes the product (e.g., "with added ——" or, "with ——" the blank to be filled in with the word(s) "spice(s)", "seasoning(s)", or the name(s) of the vegetable(s) used or in lieu of the word(s) "spice(s)" or "seasoning(s)" the common or usual name(s) of the spice(s) or seasoning(s) used) except that no declaration of the presence of onion, peppers, and celery is required for stewed tomatoes.

* * * * *

(*d*) The styles: "diced", "sliced", or "wedges" as appropriate.

* * * * *

(iii) * * *

(*a*) The word "whole" if the tomato ingredient is whole or almost whole, and the weight of such ingredient is not less than 80 percent of the drained weight of the finished food as determined in accordance with the method prescribed in (b)(2) of this section.

* * * * *

(*c*) The words "in tomato juice" if the packing medium specified in paragraph (a)(3)(iii) of this section is used.

* * * * *

(b) * * *

(1) * * *

(iii) Peel per kilogram (2.2 pounds) of the finished food covers an area of not more than 15 cm^2 (2.3 square inches) which is equivalent to 6.8 cm^2 (1.06 square inches) per pound based on an average of all containers examined provided, however, that the area of peel is not a factor of quality for canned unpeeled tomatoes labeled in accordance with paragraph (a)(5)(i) of this section; and

(iv) Blemishes per kilogram (2.2 pounds) of the finished food cover an area of not more than 3.5 cm^2 (0.54 square inch) which is equivalent to 1.6 cm^2 (0.25 square inch) per pound based on an average of all containers examined.

* * * * *

Effective date. Compliance with this final regulation may have begun August 16, 1976, and all products initially introduced into interstate commerce on or after July 1, 1979, shall fully comply.

(Secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)).)

Dated: July 5, 1978.

JOSEPH P. HILE,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-19139 Filed 7-13-78; 8:45 am]

[4110-03]

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Glycobiarsol Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document amends the animal drug regulations to reflect previously unpublished approval of a new animal drug application (NADA) held by Sterling Drug, Inc., providing for use of an arsenical anthelmintic for treatment of dogs. The application was originally sponsored by Winthrop Laboratories, but as the result of a change of sponsor, it is now sponsored by the parent company, Sterling Drug Inc.

EFFECTIVE DATE: July 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert A. Baldwin, Bureau of Veterinary Medicine (HFV-114), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Sterling Drug Inc., 90 Park Ave., New York, N.Y. 10016, is the sponsor of a NADA (31-709V) providing for use of 1- and 2.5-gram glycobiarsol tablets for treatment of whipworm infestations in dogs. This rule is to reflect the previously unpublished approval of NADA 31-709(v).

This administrative action does not constitute a reaffirmation of the drug's safety and effectiveness. This application was originally approved April 5, 1966.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), part 520 is amended by adding new § 520.1065 to read as follows:

§ 520.1065 Glycobiarsol tablets.

(a) *Specifications.* Each tablet contains 1 or 2.5 grams of glycobiarsol.

(b) *Sponsor.* See No. 000934 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* 100 milligrams per pound of body

weight (one 1-gram tablet per 10 pounds or one 2.5-gram tablet per 25 pounds of body weight) once daily for 5 consecutive days.

(2) *Indications for use.* For elimination of whipworms (*Trichuris vulpis*) from dogs.

(3) *Limitations.* Administer tablets orally or crush and mix in feed. If required, animals can be retreated 2 to 4 weeks after first treatment. Fasting is not required prior to treatment, and no purgation is needed following treatment. Administer with caution to severely debilitated and emaciated animals. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. This regulation is effective July 14, 1978.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)).)

Dated: July 7, 1978.

C. D. VAN HOUWELING,
Director, Bureau of Veterinary Medicine.

[FR Doc. 78-19231 Filed 7-13-78; 8:45 am]

[4110-03]

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Amprolium, Ethopabate, Bacitracin, and Roxarsone

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The regulations are amended to reflect approval of a new animal drug application (NADA) filed by IMC Chemical Group, Inc., providing for use of a medicated chicken feed to be used for prevention of coccidiosis, improved feed efficiency, and improved pigmentation.

EFFECTIVE DATE: September 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Lonnie W. Luther, Bureau of Veterinary Medicine (HFV-147), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4317.

SUPPLEMENTARY INFORMATION: IMC Chemical Group, Inc., P.O. Box 207, Terre Haute, Ind. 47808, filed an NADA (105-758V) providing for use of a medicated feed for broiler chickens that contains amprolium, ethopabate, bacitracin zinc, and roxarsone. The combination of amprolium and ethophabate at fixed concentrations of 113.5 and 36.3 grams per ton, respectively, plus 10 to 50 grams per ton of bacitracin zinc and 15.4 to 45.4 grams per ton of roxarsone is to be used to improve feed efficiency and as an aid in prevention of coccidiosis. The combination of the same fixed concentrations of amprolium and ethopabate plus 10 grams per ton of bacitracin zinc and 30 to 45.4 grams per ton of roxarsone is used for improved pigmentation in addition to its use for the prevention of coccidiosis and improved feed efficiency.

Approval of this application does not constitute a reaffirmation of the underlying human safety data for the combination of amprolium, ethopabate, bacitracin zinc, and roxarsone.

In accordance with the freedom of information regulations and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)) of the animal drug regulations, a summary of the safety and effectiveness data and information submitted to support the approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 558 is amended in § 558.58 by adding to the table in paragraph (e)(1) two new combinations to item (iii), immediately following the entry "Bacitracin 20 to 35 plus roxarsone 34 (0.00375 pct)." to read as follows:

§ 558.58 **Amprolium and ethopabate.**

* * * * *

(e) * * *

(1) * * *

Amprolium and ethopabate [1]	Combination [1]	Indications for use	Limitations	Sponsor
(iii) Amprolium 113.5 (0.0125 pct) and ethopabate 36.3 (0.004 pct).	.....	.....	.....	.....
*	*	*	*	*
	Bacitracin 10 to 50 plus roxarsone 15.4 to 45.4 (0.0017 pct to 0.005 pct).	Broiler chickens; as an aid in prevention of coccidiosis where severe exposure to coccidiosis from *Eimeria acervulina, E. maxima,* and *E. brunetti* is likely to occur; improved feed efficiency.	Do not feed to laying chickens; withdraw 5 d before slaughter; as sole source of amprolium and organic arsenic; do not use as a treatment for outbreaks of coccidiosis; feed as the sole ration from time chicks are placed on litter until past the time when coccidiosis is ordinarily a hazard; amprolium and ethopabate as provided by No. 000006 is sec. 510.600(c) of this chapter; bacitracin zinc as provided by No. 012769; roxarsone as provided by No. 017210; combination as provided by No. 012769.	012769
	Bacitracin 10 plus roxarsone 30 to 45.4 (0.0033 pct to 0.005 pct).	Broiler chickens; as an aid in prevention of coccidiosis where severe exposure to coccidiosis from *E. acervulina, E. maxima,* and *E. brunetti* is likely to occur; improved feed efficiency and improved pigmentation.	.....do.....	012769
*	*	*	*	*

[1] In grams per ton.

Effective date: July 14, 1978.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)).)

Dated: July 7, 1978.

C. D. VAN HOUWELING,
Director, Bureau of Veterinary Medicine.

[FR Doc. 78-19232 Filed 7-13-78; 8:45 am]

[4210-01]

Title 24—Housing and Urban Development

CHAPTER III—GOVERNMENT NATIONAL MORTGAGE ASSOCIATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-78-557]

PART 300—GENERAL

List of Attorneys-in-Fact

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: This amendment updates the current list of attorneys-in-fact by amending paragraph (c) of 24 CFR 300.11. These attorneys-in-fact are authorized to act for the association by executing documents in its name in conjunction with servicing GNMA's mortgage purchase programs, all as more fully described in paragraph (a) of 24 CFR 300.11.

DATES: This amendment is effective July 14, 1978.

ADDRESSES: Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, telephone 202-755-7603.

FOR FURTHER INFORMATION CONTACT:

Mr. William J. Linane, Office of General Counsel, 202-755-4942.

SUPPLEMENTARY INFORMATION: Notice and public procedure on this amendment are unnecessary and impracticable because of the large volume of legal documents that must be executed on behalf of the Association.

1. Paragraph (c) of 24 CFR 300.11 is amended by deleting the following names from the current list of attorneys-in-fact:

Name and Region

Norman Camber, Los Angeles, Calif.
David L. Floyd, Atlanta, Ga.
Fred J. Haupt IV, Los Angeles, Calif.
Grace G. McKay, Atlanta, Ga.

2. Paragraph (c) of 24 CFR 300.11 is amended by adding the following names in alphabetical sequence to the current list of attorneys-in-fact:

Name and Region

Marcelo J. Bueno, Jr., Los Angeles, Calif.
Susan M. Draney, Los Angeles, Calif.
D. Keith Gettmann, Atlanta, Ga.
Robert R. Glinski, Philadelphia, Pa.
Patricia M. Langley, Atlanta, Ga.
Vincent Liott, Philadelphia, Pa.
James L. Smith, Philadelphia, Pa.
Angela Tolotta, Philadelphia, Pa.
Robert M. Tanabe, Los Angeles, Calif.
J. H. Van House, Atlanta, Ga.
Harvey W. Young, Philadelphia, Pa.

(Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).)

Issued at Washington, D.C. on July 6, 1978.

JOHN H. DALTON,
President, Government National Mortgage Association.

[FR Doc. 78-19465 Filed 7-13-78; 8:45 am]

[4510-27]

Title 29—Labor

CHAPTER V—WAGE AND HOUR DIVISION

PART 870—RESTRICTION ON GARNISHMENT

Updating of Regulation To Reflect Effect of Fair Labor Standards Amendments of 1977—Correction

AGENCY: Employment Standards Administration, Labor.

ACTION: Correction of final rule.

SUMMARY: Amendments to the garnishment regulations were published in the June 30, 1978, FEDERAL REGISTER to delete references to the $2.30 per hour Fair Labor Standards Act minimum wage and substitute $2.65 per hour which is the current Fair Labor Standards Act section 6(a)(1) minimum wage. By error references in two paragraphs to the lower wage were unchanged. This document corrects these omissions.

DATE: This document is effective as of June 30, 1978.

FOR FURTHER INFORMATION CONTACT:

Paul G. Campbell, Director, Division of Minimum Wage and Hour Standards, Office of Fair Labor Standards, Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210, telephone 202-523-7043.

SUPPLEMENTARY INFORMATION: In the June 30, 1978, edition of the FEDERAL REGISTER at 43 FR 28471, part 870 was revised to change the reference to the $2.30 Fair Labor Standards Act minimum wage to $2.65 which under the Fair Labor Standards Amendments of 1977 is the current section 6(a)(1) Fair Labor Standards Act minimum wage.

Paragraph (b) of § 870.10 was amended by revising subparagraphs (1), (2), and (3), but the reference in the last sentence of paragraph (b) immediately preceeding subparagraph 1 to the obsolete $2.30 wage was not corrected. Accordingly, this sentence is deleted and the word "Thus:" substituted therefor.

Also paragraph (c) (2) of § 870.10 was not revised to reflect the $2.65 wage. This document corrects that omission, with the resulting revision of many other figures in the paragraph which are also based on the Fair Labor Standards Act minimum wage.

This document was prepared under the direction and control of Herbert J. Cohen, Assistant Administrator, Office of Fair Labor Standards, Wage and Hour Division, U.S. Department of Labor.

Accordingly, paragraphs (b) and (c)(2) of § 870.10 are corrected as follows:

§ 870.10 Maximum part of aggregate disposable earnings subject to garnishment.

* * * * *

(b) *Weekly pay period.* The statutory exemption formula applies directly to the aggregate disposable earnings paid or payable for a pay period of 1 workweek, or a lesser period. Its intent is to protect from garnishment and save to an individual earner, the specified amount of compensation for his personal services rendered in the workweek, or a lesser period. Thus:

* * * * *

(c) * * *

* * * * *

(2) The "multiple" of the Federal minimum hourly wage equivalent to that applicable to the disposable earnings for 1 week is represented by the following formula: The number of workweeks or fractions thereof (×) ×30× the applicable Federal minimum wage ($2.65). For the purpose of this formula, a calendar month is considered to consist of 4⅓ workweeks. Thus, so long as the Federal minimum houriy wage is $2.65 an hour, the "multiple" applicable to the disposable earnings for a 2-week period is $159.00

(2×30×$2.65); for a monthly period, $344.50 (4⅓×30×$2.65); and for a semimonthly period, $172.25 (2⅙×30×$2.65). The "multiple" for any other pay period longer than 1 week shall be computed in a manner consistent with section 303(a) of the act and with this paragraph.

* * * * *

Signed at Washington, D.C., on this 11th day of July 1978.

XAVIER M. VELA,
Administrator.

[FR Doc. 78-19498 Filed 7-13-78; 8:45 am]

[4310-84]

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 5644; S-5045]

CALIFORNIA

Partial Revocation of Reclamation Project Withdrawal

AGENCY: Bureau of Land Management (Interior).

ACTION: Final rule.

SUMMARY: This order will restore approximately 38 acres in the Trinity River Division of the Central Valley Project to the operation of the public land laws generally, including the mining laws. This action is being taken because the Bureau of Reclamation no longer has need for the 38 acres.

EFFECTIVE DATE: August 11, 1978.

FOR FURTHER INFORMATION CONTACT:

Eldon G. Hayes, 202-343-8731.

By virtue of the authority contained in section 204 of the Act of October 21, 1976, 90 Stat. 2751 (43 U.S.C. 1714), it is ordered as follows:

1. The order of the Bureau of Reclamation dated February 19, 1952, concurred in by the Bureau of Land Management on February 27, 1952, withdrawing lands for the Trinity River Division of the Central Valley Project, is hereby revoked so far as it affects the following described lands:

MOUNT DIABLO MERIDIAN

T. 32 N., R. 5 W.,
sec. 11, lots 4 through 11 (formerly described as lot 1).
The area described aggregates 37.90 acres.

The land is located 4 miles north of the city of Redding in Shasta County. The area is a mixture of industrial, residential, agricultural, and recreational related activities.

2. At 10 a.m. on August 11, 1978, the lands shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on August 11, 1978, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The lands will be open to location under the United States mining laws at 10 a.m. on August 11, 1978. They have been and will continue to be open to applications and offers under the mineral leasing laws.

Inquiries concerning the land shall be addressed to the Bureau of Land Management, room E-2841, Federal Office Building, 2800 Cottage Way, Sacramento, Calif. 95825.

Dated: July 6, 1978.

GUY R. MARTIN,
Assistant Secretary of the Interior.

[FR Doc. 78-19422 Filed 7-13-78; 8:45 am]

[4110-89]

Title 45—Public Welfare

CHAPTER I—OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 164—CAPACITY BUILDING FOR STATISTICAL ACTIVITIES IN STATE EDUCATIONAL AGENCIES

Interim Final Regulation

AGENCY: National Center for Education Statistics.

ACTION: Interim final regulation.

SUMMARY: The Administrator of the National Center for Education Statistics issues an interim final regulation governing the award of discretionary grants to build the statistical capabilities of State educational agencies. The regulation states eligibility conditions, application requirements, funding criteria, and other rules for the administration of the program.

EFFECTIVE DATE: This regulation is expected to take effect 45 days after it is transmitted to Congress. (Regulations are transmitted to Congress 3 to 4 days before they are published in the FEDERAL REGISTER.) However, this date is changed by statute if Congress disapproves the regulation or takes certain types of adjournments. If you want to know the exact effective date of this regulation, call or write the National Center for Education Statistics' contact person.

DATE: Public comments are invited and will be considered for purposes of possible changes in the regulation for fiscal year 1979 and subsequent years. Comments must be recieved on or before September 12, 1978.

ADDRESSES: Comments should be addressed to Mr. Ivan Seibert, National Center for Education Statistics, 400 Maryland Avenue SW., room 3061, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT:

Ms. Donna Mertens, National Center for Education Statistics, 400 Maryland Avenue SW., Room 3061, Washington, D.C. 20202, 202-245-7813.

SUPPLEMENTARY INFORMATION: 1. *Nature of program.* Section 406(b)(3) of the General Education Provisions Act directs the National Center for Education Statistics to assist State and local educational agencies in improving and automating their statistical and data collection activities. This document governs the award of discretionary grants to build the statistical capabilities of State educational agencies. Grants under the program are intended to develop or enhance the long-term capability of the State educational agency to collect, process, analyze, or report statistical data about elementary/secondary education. Grants may focus on a reduction of data burden; improvement in the timeliness of data reporting; improvement in the quality, comparability, or utility of data; increase in analytical capability; improvement in the flow of information to local educational agencies or other agencies of the State; or similar statistical objectives.

The National Center for Education Statistics is limiting eligibility for grants to State educational agencies because they are in a unique position to collect, process, analyze, and report statistical data about elementary/secondary education within their States. This limitation minimizes the possibility of fragmented systems being developed within a State, and maximizes the potential for improved utilization of data at the State level for planning and decisionmaking. The limited amount of funds available for the program is another reason for limiting eligibility for grants to State educational agencies.

The Administrator of the National Center for Education Statistics has allocated $300,000 for the support of this program in fiscal year 1978. It is anticipated that only about six (6) grants will be awarded in fiscal year 1978.

2. *Need for regulation.* Certain rules are needed for the proper administration of a Federal grant program. These rules relate to such matters as the types of agencies eligible to apply for a grant, the types of assistance available, the information which must be put in applications, and the criteria used to judge applications. Applicants

must know this information to determine whether to apply and how to submit applications. Federal law requires that these rules be published in the FEDERAL REGISTER (5 U.S.C. 552).

3. *Waiver of proposed rulemaking.* Procedures of this Department provide for public participation in the development of program regulations through the methods set forth in section 553, Title 5, United States Code. However, an opportunity for public comment is being provided only for purposes of possible future changes in the document beginning in fiscal year 1979. The document is being issued as an interim final rule to govern fiscal year 1978 grants based upon the Administrator's and Assistant Secretary for Education's finding, in accordance with 5 U.S.C. 553(b)(3)(B), that opportunity for advance public comment on these provisions would be impracticable and contrary to the public interest given the need to publish a final rule at this time.

Under section 431(d) of the General Education Provisions Act, a regulation cannot take effect until 45 days after the final regulation has been transmitted for congressional review. Therefore, if a proposed regulation were issued at this time for the program, it would have to be followed by a 30-day comment period, an additional period for having the final regulation prepared and cleared within the Department of Health, Education, and Welfare, and then the 45-day congressional review period before grant awards could be made, if the awards were to be made on the basis of the regulation.

Funds appropriated to the National Center for Education Statistics in fiscal year 1978 for this program must be awarded no later than September 30, 1978. It does not appear that there will be sufficient time to do this on the basis of an effective regulation if the proposed rulemaking procedure is followed.

Also, if a proposed regulation with opportunity for public comment were issued, it would be necessary to invite applications on the basis of the proposed regulation in order to permit awards by the end of fiscal year 1978. It then would be impracticable to make substantive changes in the final regulation, because the applications would have been received, and time would not permit their amendment to reflect changes in the regulation.

This document governs the award of a small amount of money and does not regulate controversial policy issues. It has been developed in close consultation with the State educational agencies.

For the above reasons, the opportunity for public comments on a proposed rule for fiscal year 1978 is impracticable and contrary to the public interest. This opportunity is provided for purposes of possible changes to the document beginning in fiscal year 1979.

Title 45 of the Code of Federal regulations is amended by adding a new part 164 to read as set forth below.

Dated: May 11, 1978.

MARIE D. ELDRIDGE,
Administrator, National Center for Education Statistics.

Approved: April 22, 1978.

MARY BERRY,
Assistant Secretary for Education.

Approved: July 8, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary of Health, Education, and Welfare.

(Catalog of Federal Domestic Assistance No. 13.922—Capacity Building for Statistical Activities in State Educational Agencies.)

Sec.

164.01 Scope of this document.
164.02 Purpose of the capacity-building program.
164.03 Definitions.
164.04 Nature of projects.
164.05 Allowable costs.
164.06 Duration of projects.
164.07 Eligibility.
164.08 Application requirements.
164.09 How applications are judged.
164.10 Evaluation criteria.

AUTHORITY: Section 406 (b)(3) and (e) of the General Education Provisions Act (20 U.S.C. 1221-1 (b)(3) and (e)).

§ 164.01 Scope of this document.

(a) This document establishes procedural and substantive requirements and criteria governing applications and grants under the capacity-building program of the National Center for Education Statistics.

(b) The provisions of parts 100, 100a, and 100c of Title 45 CFR apply to the award and administration of grants under this document. These parts contain general rules about fiscal and administrative matters pertaining to grants. For the purposes of this document, wherever the term "Commissioner" is used in these parts, it shall be read to mean "Administrator."

§ 164.02 Purpose of the capacity-building program.

The purpose of this program is to build the statistical capabilities of State educational agencies by facilitating improvements or automation in their statistical systems.

§ 164.03 Definitions.

The following definitions apply to terms used in this document:

"Administrator" means the Administrator of the National Center for Education Statistics.

"Capacity building" means developing or improving long-term capabilities or competencies.

"State" includes, in addition to the several States of the Union, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and the Canal Zone.

"State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

"Statistical activities" means activities concerned with collecting, processing, analyzing, or reporting statistical data about education.

§ 164.04 Nature of projects.

A State educational agency may apply for a grant under this program to develop or enhance its long-term capability to collect, process, analyze, or report statistical data about elementary/secondary education. The grant may focus on a reduction of data burden; improvement in the timeliness of data reporting; improvement in the quality, comparability, or utility of data; increase in analytical capability; improvement in the flow of information to local educational agencies or other agencies of the State; or similar statistical objectives. Grant activities may include but are not limited to planning, training, consultant services, staff development, or activities which will promote automation.

§ 164.05 Allowable costs.

(a) Determination of costs allowable under a grant are made in accordance with Government-wide cost principles in appendix B of 45 CFR part 100a.

(b) Funds awarded under this document must be used to supplement, and in no case supplant, the level of funds that would, in the absence of a grant, be made available by the State educational agency for statistical activities.

(c) No capital outlay is allowable for lands or buildings.

§ 164.06 Duration of projects.

Grants normally will be of 12 months' duration. The grantee may use grant funds during the period specified in the grant document unless the grant is suspended or terminated. If the grantee needs additional time to complete the grant project, the grantee may apply for an extension of the grant period without additional funds. The Administrator may approve this extension at his or her discretion.

§ 164.07 Eligibility.

(a) Only a State educational agency is eligible for a grant under this program. Only one application under each announcement inviting applications for grants may be submitted.

(b) The Administrator only considers applications submitted in response to specific public announcements issued periodically by the Administrator.

§ 164.08 Application requirements.

(a) To apply for a grant, a State educational agency shall submit the designated application form.

(b) The application must include:

(1) A description of the project and other information to enable the Administrator to apply the evaluation criteria in judging the application.

(2) A brief description of the applicant's current statistical activities and of the number of full-time equivalent staff engaged in these activities.

(3) A description of how the project will relate to the organizational structure of the applicant.

§ 164.09 How applications are judged.

Competitive applications are rated and ranked by an evaluation panel under the criteria stated in § 164.10. If, in the Administrator's view, the information in the application is not adequate to permit an informed evaluation of the application, the Administrator may request the applicant to supply additional information. Final determinations on awards are made by the Administrator.

§ 164.10 Evaluation criteria.

The Administrator evaluates an application for assistance under this document in accordance with the following criteria (potential points=100):

(a) (0-40 points.) The significance of the project in improving the long-term statistical capability of the State educational agency, as measured by a reduction of data burden; improvement in the timeliness of data reporting; improvement in the quality, comparability, or utility of data; increase in analytical capability; improvement in the flow of information to local educational agencies or other agencies of the State; or similar statistical objectives.

(b) (0-20 points.) The adequacy of the proposal, as indicated by the following factors:

(1) (0-15 points.) The quality and explicitness of the work plan in identifying activities, tasks, procedures, and coordination efforts (if applicable).

(2) (0-5 points.) The soundness of the management plan, which includes such items as the time schedule and projections of quarterly milestones.

(c) (0-30 points.) The capability of the State educational agency to perform the proposed activities, as indicated by the following factors:

(1) (0-15 points.) The qualifications of the proposed projects staff (or the quality of provisions for contractor services) with respect to training and relevant experience, and the amount of time they will devote to the project.

(2) (0-15 points.) The adequacy of the State educational agency's commitment and arrangements made to insure the long-term effect of the proposed activities after the expiration of Federal funds.

(d) (0-10 points.) The reasonableness of the budget for the work to be done.

[FR Doc. 78-19499 Filed 7-13-78; 8:45 am]

[6315-01]

CHAPTER X—COMMUNITY SERVICES ADMINISTRATION

[CSA Instruction 6132-2a]

PART 1061—CHARACTER AND SCOPE OF SPECIFIC PROGRAMS

Subpart—Community Food and Nutrition Program (CFNP)

AGENCY: Community Services Administration.

ACTION: Final rule.

SUMMARY: The Community Services Administration (CSA) is filing a final rule revising its policy statement for the community food and nutrition program funded under section 222(a)(5) of the Economic Opportunity Act of 1964, as amended. This final rule is required since CSA has determined that there is a need for policy change to the prior year's funding policy and a need to inform applicants regarding this fiscal year's application and review process. The rule details policies, application procedures, and allocations relevant to funding community food and nutrition projects with fiscal year 1978 funds.

EFFECTIVE DATE: July 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Marshall Boarman, Community Services Administration, 1200 19th Street NW., Washington, D.C. 20506, telephone 202-254-5140.

SUPPLEMENTARY INFORMATION: On May 16, 1978, the Community Services Administration published a proposed rule in the FEDERAL REGISTER (45 CFR) which proposed revising § 1061.5-1 through § 1061.50-15 (CSA Instruction 6132-2). The proposed revision reflected changes in program emphasis and program categories and provided a more detailed picture of eligible activities than is found in the current subpart and instruction. The changes were the result of the recommendations of CFNP planning sessions whose participants included: representatives of CSA Headquarters and Regional Offices, CAA's, SEOO's, antihunger groups, low-income people, Indian people, and migrants. Comments on the proposed rule received prior to June 12, 1978 were to be considered in drafting the final rule.

Of the total of 113 comments received, 38 were from private nonprofit antihunger organizations, 30 from CSA's Community Action Agencies (CAA's), 15 from State Economic Opportunity Offices (SEOO's), 9 from individual beneficiaries of CFNP, 7 from CSA's Regional Offices, 6 from State CAP Associations, 3 from other Federal agencies, 2 from local government agencies, 2 from migrant and Indian groups and 1 from a State Governor.

The great majority of the responses were highly favorable in respect to the proposed rule as a whole. They praised the clarity and comprehensiveness of the sections dealing with eligible activities and the rating and ranking criteria. They also expressed very strong support for the emphasis on catalytic activity and advocacy. Typical of the reaction to this new emphasis was the response of Ms. Carol Tucker Foreman, Assistant Secretary for the Food and Consumer Services of the U.S. Department of Agriculture. Wrote Ms. Foreman: "We agree with the proposed rule's emphasis that advocacy must run through all CSA's activities and should be the backbone of CSA's work. The size of the CFNP's appropriation requires that each dollar free other antihunger funds in the catalytic manner described in the proposals. Similarly we support CSA's efforts to shift from direct service delivery—*which we firmly intend to improve*—toward 'the stimulation of the delivery of goods and services to the poor by other agencies and institutions * * *'" (emphasis added).

Likewise there was near unanimous agreement among the commentators that activities described as "access"—that is, activities aimed at facilitating participation by the poor in publicly funded food programs—be given the highest priority. The need to emphasize "access" is particularly clear in the case of the new food stamp program. The proposed rule noted that USDA had issued instruction to Food and Nutrition Service Regional Administrators and State Welfare Commissioners that would greatly expedite certification procedures for persons applying for food stamp benefits. In addition, the Food Stamp Act of 1977, by eliminating the purchase requirement, has made it easier for the poorest of the poor to participate. The proposed rule concluded that because of these improvements it would no longer by necessary for CFNP funds to be used on the same scale as in the past for direct financial assistance and feeding support.

Many commentators rightly stressed that it would be wrong to infer from this that CSA's role in the food stamp program has diminished. To cope with

the confusion among recipients and the administrative difficulties which can be expected during the implementation of the new Food Stamp Act, a substantial monitoring and outreach effort on the part of CFNP grantees will be required during fiscal year 1978. Ms. Foreman underlined this point as follows: "Implementation of the new Food Stamp Act will be a massive job for States and localities. The entire law, regulations, and instructions are being completely revised. If the new program is implemented properly at the local level, it will serve poor people well for years to come. If it is not implemented adequately, it could take a very long time to straighten everything out. I strongly urge you to make 'access' activities in the food stamp area one of your highest priorities * * * There must be informed and aggressive actions statewide and in communities across the country to monitor program implementation, to help Governmental agencies to do their job, and where necessary, to insure that the law is enforced. Indeed we have written our regulations with the assumption that local groups will actively participate in the implementation process."

In view of the concerns expressed by Ms. Foreman and many of the other commentators, the proposed rule has been modified so as to allow extra points to be given to the applicants who submit a proposal in the "access" category. In addition, specific reference is made in the final rule to the new Food Stamp Act as well as to the opportunity for CFNP advocacy in respect to the school breakfast program.

Another recommendation that was strongly supported by many of the commentators was the deletion of "food supply" as a separate program category and the introduction of a new category: "nutrition and consumer education". This recommendation has been adopted. The emphasis in the new program area of nutrition education will be on advocacy efforts rather than on nutrition education courses conducted by CFNP grantees. One opportunity for such advocacy is presented by the fact that USDA's Food and Nutrition Service recently published regulations enabling states to apply for $28 million in nutrition education funds authorized by Congress. It is incumbent on CFNP grantees to see that state nutrition education programs do not slight the needs of the poor.

Most of the remaining comments centered around the issue of "eligible applicants". Many antihunger groups, objecting to the requirement that they apply for general community funds through a CAA, recommended open competition for these funds. The proposed rule has been altered so as to allow an antihunger group to apply directly to a regional office in the event such a group and a CAA are unable to work out a delegate agency arrangement. However, such applications will be considered only if a CAA or LPA acting in place of a CAA does not submit a proposal to operate a project in the geographical area in question, or submits a proposal which is not funded.

A number of commentators recommended that CAA's be required to coordinate with antihunger groups as well as vice versa and that cooperation between the two groups be mandated. The importance of this recommendation has been recognized, and to further encourage such cooperation, extra points have been assigned in the rating criteria for those groups that do so.

Most of the 15 SEOO's and several of the 6 CAP associations who filed comments were concerned about their restricted access to general community funds. The proposed rule has been modified so as to (1) allow SEOO's to apply as project operators or prime sponsors for projects in "uncapped" areas, and (2) allow SEOO's and qualified CAP associations to apply as operators of statewide advocacy, planning, coordinating, and resource mobilization activities related to the problem of malnutrition and hunger among the poor.

It should be noted that SEOO's are expected, under CSA instruction 7501-1, to use their present staff and resources to carry out on a statewide basis activities of the kind just mentioned, in support of title II programs. CFNP funds awarded to SEOO's, therefore, would be used to supplement and not supplant current SEOO projects addressing the problem of hunger and malnutrition.

A number of comments made by the antihunger groups objected to the limited funding for special support projects while some CAA's and SEOO's complained that the proposed rule would prevent them from applying for special support type activities. The final rule makes it clear that organizations eligible to apply for general community funds may propose projects of the type described under the special support category, using general community funds. Several T&A providers suggested expanding their role so they could provide T&TA to both CFNP grantees and other antihunger organizations operating programs for the poor. This recommendation is being tabled this year on the grounds that CSA's limited fiscal year 1978 T&TA funds should be targeted on CFNP grantees, and in particular on CAA's during the difficult period of transition from service delivery projects to expanded catalytic activity and advocacy.

The only other major change in the proposed rule is the announcement of funding allocations for the regions and an explanation of the formula used to arrive at these allocations. The new formula represents a significant advance over previous methods for apportioning CFNP funds, since it sets in motion a process which will eventually eliminate the relative underfunding of some regions and overfunding of others. It must be emphasized that no region has ever been overfunded in terms of the hunger and malnutrition needs of the poor living within the region.

CSA thanks everyone who took the time to respond to the proposed rule. Only through such a process could CSA arrive at a balanced position which meets the requirements of the EOA, the needs of the subgroups which make up the poverty population and the concerns and preferences of the various organizations, public and private, which are combating hunger and malnutrition among the poor. Limited funds make it impossible to satisfy the priorities and preferences of everyone. CSA believes that its redesigned CFNP distributes the funds among the types of projects, grantees, and geographical areas more equitably than in the past, and provides all grantees with the tools and incentives for working together to create a truly effective and successful program. A unique opportunity also exists for CFNP grantees and CSA to forge a close working relationship with the Federal agency which controls the great bulk of funds available for the food and nutrition needs of the poor: The U.S. Department of Agriculture "traditionally" wrote Ms. Foreman in her comment on the rule, "CFNP-funded advocates and this agency have had an adversary relationship. We intend to reshape that interaction into a complementary one in which our common goals are stressed." The new CFNP rule provides the framework for realizing this partnership.

The regulations are hereby adopted with the changes indicated below.

(Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.)

FRANK N. JONES,
Acting Director.

The regulations on the Community Food and Nutrition Program, 45 CFR 1061.50-1 through 1061.50-15, are revised as follows:

Sec.
1061.50-1 Applicability.
1061.50-2 Definitions.
1061.50-3 Purpose of the subpart.
1061.50-4 Introduction.
1061.50-5 Policy.
1061.50-6 Purposes of the program.
1061.50-7 Program categories.
1061.50-8 Eligible participants.
1061.50-9 Eligible applicants.
1061.50-10 Funding.
1061.50-11 Application procedures.
1061.50-12 Reporting requirements.
1061.50-13 Current fiscal year application and review information.

Appendix A.
Appendix B.
Appendix C.

AUTHORITY: Sec. 602, 78 Stat. 530, 42 U.S.C. 2942.

§ 1061.50–1 Applicability.

This subpart is applicable to all grants and contracts funded under section 222(a)(5) of the Economic Opportunity Act of 1964, as amended, when the assistance is administered by the Community Services Administration.

§ 1061.50–2 Definitions.

(a) *Program.* The provision of Federal funds and administrative direction to accomplish a prescribed set of objectives through the conduct of specific activities. Example: CSA's Community Food and Nutrition Program.

(b) *Project.* The implementation level of a program where resources are used to produce an end product that directly contributes to the objectives of the program. Example: The School Breakfast Expansion Campaign of the Milwaukee CAP.

(c) *Limited Purpose Agency.* An organization or agency funded under sections 221 or 222 of the Act to conduct a specific program or programs, rather than the broad spectrum of programs conducted by a CAA. Limited purpose agencies are not subject to the requirements for local government designation and comprehensive community representation applicable to CAA's.

(d) *Catalytic Activity.* An activity conducted by a person, organization or group which stimulates, expedites or facilitates change within a given community.

§ 1061.50–3 Purpose of the Subpart.

This subpart sets forth CSA's policy for the Community Food and Nutrition Program (CFNP) authorized under section 222(a)(5) of the Economic Opportunity Act of 1964, as amended. It discusses the program purposes and categories of activities, participant and applicant eligibility criteria, application procedures and reporting requirements. The Appendices provide additional information relating to funding for the current fiscal year and the process for reviewing, rating and ranking applications.

§ 1061.50–4 Introduction.

(a) Section 201(a) of the Economic Opportunity Act of 1964 as amended states that the basic purpose of all title II programs, including the Community Food and Nutrition Program, is * * * "to *stimulate* a better focusing of all available local, State, private and Federal resources upon the goal of enabling low-income families and low-income individuals * * * *to become fully self-sufficient*" (emphasis added).

(b) This statement sums up CSA's historic mission which has been to serve as a stimulator or catalyst of activities conducted by other public and private institutions rather than as a provider of services in competition with these institutions. CSA's limited funds make it necessary, in any event, for CFNP projects to reduce their involvement in direct service delivery and to function primarily as advocates and catalytic agents.

(c) A second important point made in the statement quoted above is that the catalytic activity of title II programs, including the CFNP, should be directed to helping the poor escape the cycle of poverty. The relevance of the CFNP to this objective is underscored by a report entitled "Dietary Goals for the United States" (2d Edition) issued in February 1978, by the U.S. Senate's Select Committee on Nutrition and Human Needs. According to the report, an inadequate diet is a principal cause of 6 of the 10 leading killer diseases—the six being diabetes, strokes and hypertension, heart disease, some cancers, arteriosclerosis and cirrhosis of the liver. An inadequate diet leads to ill health which in turn leads to unemployability and chronic dependence on public assistance programs. Hence, the importance of a concentrated attack on the problem of malnutrition among the poor.

§ 1061.50–5 Policy.

(a) Section 222(a)(5) of the Economic Opportunity Act authorizes: "A program to be known as Community Food and Nutrition designed to provide, on an emergency basis, directly or by delegation of authority pursuant to the provisions of title VI of this Act, financial assistance for the provision of such supplies and services, nutritional foodstuffs, and related services as may be necessary to counteract conditions of starvation or malnutrition among the poor. Such assistance may be provided by way of supplement to such other assistance as may be used to extend and broaden such programs to serve economically disadvantaged individuals and families where such services are not now provided."

(b) In its effort to "supplement and extend and broaden" other Federal food programs, the CFNP must not lose sight of the essentially *catalytic* nature of CSA's mission referred to in § 1061.50–4. Funds should be used primarily as seed money or in ways that have a multiplier effect and not for duplicative or long-term feeding programs. The emphasis on catalytic activity does not preclude the use of CFNP funds, in emergency situations, for the direct delivery of foodstuffs and related services to individuals and families within CSA poverty guidelines who are insufficiently served or not served at all by other programs. (See § 1061.50–7(d)(4) below. Benefits received under the CFNP shall not be considered as income for the purposes of determining eligibility for other Federal food programs).

(c) In addition, CFNP projects will be expected to conform to the purposes of title II programs listed in sections 201(a) and 223 of the Economic Opportunity Act and reflected in CSA's six general standards of effectiveness, and to the two specific purposes of the CFNP cited in section 222(a)(5) of the EOA and reflected in the Specific Standards of Effectiveness. The degree to which these purposes/standards are to be addressed is outlined below in § 1061.50–6. See also CSA Instruction 7850–1a for detailed procedures on how all projects are to comply with the Standards of Effectiveness.

§ 1061.50–6 Purpose of the program.

(a) While every CFNP project should seek to achieve all five of the following title II purposes (General Standards of Effectiveness), at a minimum, each project must contribute to the achievement of *at least three* of them:

(1) *Planning and Coordination:* Strengthened community capabilities for planning and coordination so as to insure that available assistance related to the elimination of poverty can be more responsive to local needs and conditions.

(2) *Improvement of Service Delivery:* Better organization of services related to the needs of the poor.

(3) *Maximum Feasible Participation:* Maximum feasible participation of the poor in the development and implementation of all programs and projects designed to serve the poor.

(4) *Mobilization of Resources:* Broadened resource base of programs directed to the elimination of poverty so as to include all elements of the community able to influence the quality and quantity of services to the poor.

(5) *Innovative Approaches:* Greater use of new types of services and innovative approaches in attacking causes of poverty, so as to develop increasingly effective methods of employing available resources.

(b) In addition, each CFNP project must contribute to the achievement of *at least one* of the following legislatively mandated purposes of the Community Food and Nutrition Program (Specific Standards of Effectiveness):

(1) Improvement in the nutritional status of the target population.

(2) Reduction in hunger among the target population.

§ 1061.50–7 Program categories.

The categories of projects eligible for funding under the Community Food and Nutrition Program are listed in priority order as follows:

(a) *Access:* To improve the opportunities for low-income people to gain

access to, and participate in, Federal and non-Federal food and nutriton programs. Activities eligible for funding under the "access" category include but are not limited to:

(1) The monitoring of programs conducted by other agencies and in particular monitoring the implementation by USDA and State and local governments of the Food Stamp Act of 1977, in order to insure compliance with relevant Federal and State statutes and regulations;

(2) Seeking changes in Federal and State statutes and regulations to insure a more equitable distribution of food and nutrition benefits to the poor;

(3) Aiding, through consultation with parents, school administrators and other officials, in the establishment of school breakfast programs (Less than 25 percent of the children receiving free and reduced price school lunches receive school breakfasts);

(4) Participating with a State in the development of State plans, certification manuals, etc., for food and nutrition programs;

(5) Building coalitions to make possible community input into the improvement and implementation of programs;

(6) Designing and carrying out strategies for obtaining matching funds for new and existing projects supported from CFNP funds, and for spinning off such projects to other agencies (e.g., projects funded under HEW and USDA such as title XX; food stamp outreach);

(7) Catalyzing an expanded and more effective outreach program on the part of other agencies;

(8) Initiating, or stimulating the formation of, community education programs aimed at apprising low-income persons of their entitlements under Federal and non-Federal food programs;

(9) Stimulating efforts to provide the poor with assistance in prescreening and application procedures and with adequate representation in administrative hearings, etc.;

(10) Initiating, or stimulating the formation of, feeding programs (e.g. Meals on Wheels) which are urgently needed and are not now being provided in the community, on the condition that significant mobilization of other resources and early spin-off of the project to a more appropriate agency is included in the application;

(11) Developing and seeking to get adopted innovative proposals to increase the amount of food available to the poor, e.g., tax incentives for food industry donations to the poor.

(12) Organizing consumer action relating to public and private sector food policies, food sales and sales taxes so as to lower costs for the poor.

(b) *Self-Help.* To improve the ability of low-income people to produce and purchase food stuffs in a manner that fosters self-sufficiency. (Note.—Self-Help activities will not be funded on a continuing basis and all prospective grantees should submit with their applications specific plans for the eventual phase-out of CFNP funding, and continuation of the project either with other funds or on a truly self-sustaining basis.) Activities eligible for funding under this category include but are not limited to: (1) conservation, distribution and utilization of foodstuffs, such as:

(i) Organizing family and community gardens;

(ii) Organizing food co-ops and buying clubs;

(iii) Establishing greenhouses, canneries, food gleaning projects, etc.;

(2) Activities which support self-help projects, such as:

(i) Mobilizing the resources of State Agriculture Departments, Land Grant Colleges, Co-Op Extension Services, USDA (e.g., the Agricultural Stabilization and Conservation Services), VISTA, CETA, etc., for obtaining seeds, plants, land, water and information;

(ii) Cooperating with Land Grant and other colleges to provide more assistance to small scale (even part-time) growers, etc.

(iii) Promoting the utilization of unused Federal, State and local land for food production;

(iv) Seeking to change laws and regulations that impede the involvement of the poor in food production, processing and distribution, etc.;

(c) *Nutrition and Consumer Education.* To improve, through catalytic activity in the area of nutrition and consumer education, the ability of low-income individuals and families to understand the connection between diet and health, to obtain at the lowest prices nutritionally superior foods and to prepare and preserve these foods in ways that minimize the loss of nutrients. Activities eligible for funding under this category include but are not limited to:

(1) Developing and demonstrating new and more effective techniques for communicating nutritional information to the poor;

(2) Stimulating the establishment by other agencies or institutions of educational programs to acquaint the low income public with the potential benefits of altering food preparation and eating habits in the light of the "Dietary Goals for the United States" recommended by the U.S. Senate's Select Committee on Nutrition and Human Needs.

(3) Stimulating the establishment of educational programs to improve the ability of low-income individuals and families to understand written guidance on food selection and to make comparisons between foods based on nutrition labelling and price;

(4) Engaging in advocacy efforts to induce Federal agencies such as USDA and HEW to design new (and redesign existing) nutrition and consumer education programs so they are more responsive to the needs of low-income consumers;

(5) Devising and carrying out strategies to insure that State nutrition education plans address the needs of children, teachers and food service workers in low-income communities and that advisory councils set up to oversee State nutrition education programs include representatives of the poor.

(6) Engaging in advocacy efforts to induce such private organizations as the American Dietetic Association, American Heart Association and American Diabetes Association etc., to direct more of their nutrition education activities to the poor, and to coordinate such activities with CSA's CFNP network.

(d) *Crisis Relief:* To improve community crisis-relief mechanisms. Activities eligible for funding under this category include but are not limited to:

(1) Organizing food banks;

(2) Negotiating for improvement in public welfare systems for distributing, in natural disasters and widespread emergency circumstances, Emergency Food Stamps, WIC packages or vouchers, USDA commodities, local food bank resources; etc.;

(3) Assisting communities to improve their crisis relief programs so that those most in need will receive swift relief;

(4) Providing foodstuffs directly and/or issuing food vouchers, but only if at least one of the following conditions is satisfied:

(i) There is a temporary emergency and timely help is not forthcoming from other agencies and,

(ii) The provision of relief is a catalytic effort which includes a plan to transfer the project, within a specified period of time, to an agency which has an assigned responsibility for providing foodstuffs, vouchers, etc. to the poor. A commitment from such an agency to take over the project should be included in the application, if possible. (Among Federal agencies the U.S. Department of Agriculture, in conjunction with the Federal Disaster Assistance Association, is responsible for the delivery of foodstuffs to needy households in disasters and other widespread emergencies.)

§ 1061.50–8 Eligible participants.

(a) All activities supported from CFNP funds must be targeted on low-income individuals and families as defined in CSA Income Poverty Guidelines (§ 1061.2 or CSA Instruction 6004-1k and changes thereto). It is important to stress this since in the case of some programs, such as the Food

Stamp Program and the National School Lunch Program, the persons eligible for benefits form a larger group than those who fall within CSA poverty guidelines. In such cases, the rule-of-thumb should be that a *majority* of the individuals or families served are within CSA guidelines.

(b) Individuals are eligible to participate upon a self-declaration of need without the delay of a "means test" or income investigation. Self-declaration of need makes possible immediate assistance for those suffering from hunger and in danger of malnutrition.

§ 1061.50–9 Eligible applicants.

(a) *General Community Projects.* (1) Section 222(a) of the Economic Opportunity Act states that the Director shall provide financial assistance "* * * in a manner that will encourage, wherever feasible, *the inclusion of assisted projects in community action programs* * * *" (emphasis added). In addition, section 222(a)(5) of the Act requires that the Director carry out the CFNP "* * * in a manner that will insure the availability of * * * supplies and services, nutritional foodstuffs and related services *through a community action agency where feasible,* or other agencies and organizations if no such (community action) agency exists or is able to administer the program) * * *" (emphasis and parentheses added).

(2) Therefore, applicants eligible to apply for General Community funds are CAA's and Limited Purpose Agencies (LPA's) serving as CAA's.

(3) Other public and private nonprofit organizations or agencies (except SEOO's or CAP Associations) which meet CSA's general eligibility criteria may apply for General Community funds but must do so as a delegate of a CAA or LPA acting in place of a CAA. If such organizations are unable to work out a delegate agency arrangement with the CAA or LPA, then they may apply directly to the appropriate Regional Office of CSA. However, such applications will be considered *only if* a CAA or LPA acting in place of a CAA does not submit a proposal to operate a project in the geographical area in question, or submits a proposal which is not funded. The deadline for submission of applications by prospective delegate agencies and the other procedures outlined in paragraph 2 of CSA Instruction 6441–1 do not apply to this program.

(4) SEOO's and CAP Associations *may not* apply for General Community funds as *operators* of local projects, nor may they apply as *conduits* for other applicants when the purpose or effect of such an arrangement is to allow those applicants to avoid the competitive process. An SEOO may apply as the *prime sponsor* of a local project when such is feasible and appropriate in order to cover a geographical area not served by a CAA or LPA acting in place of a CAA. SEOO's, and CAP Associations which meet CSA's general eligibility requirements, may also apply to the appropriate Regional Office for General Community funds for the purpose of building statewide anti-hunger coalitions (where no such coalitions now exist) or engaging in advocacy, planning, coordinating, and resource mobilization activities on a statewide basis. Exceptions to the policy stated in this paragraph may be made only by the Assistant Director, Office of Community Action, CSA.

(5) CAA's and anti-hunger groups are strongly encouraged to work together where possible. This can take the form of a CAA's delegating a part or all of its work program to an anti-hunger group, or vice versa; close and systematic coordination on the part of both groups in the planning, implementation and evaluation of CFN projects; and close collaboration in the development of state anti-hunger coalitions and anti-hunger strategies. The formation of such alliances contributes to at least *one* of the General Standards of Effectiveness (planning and coordination) and in most cases will contribute to more. (Note.—In the rating and ranking of applicants extra points will be assigned to applicants who furnish evidence that such coordination has taken or will take place.)

(b) *Special Support Projects.* (1) Public and private nonprofit organizations or agencies which meet CSA's general eligibility criteria—other than CAA's, LPA's acting in place of CAA's, SEOO's and CAP Associations—may apply for Special Support funds.

(2) Special Support projects must be designed to have a *broad impact* on the problems of hunger and malnutrition among the poor, i.e., an impact that extends beyond the boundaries of particular communities. The objective of Special Support projects is to assist in the development, coordination and expansion of food and nutrition programs for the poor on a multi-county or statewide basis.

(3) Special Support projects must relate to one or more of the four program categories outlined in § 1061.50–7. Special Support activities may include but are not limited to: monitoring and interpreting changes in relevant Federal and State laws, regulations and procedures; initiating and/or coordinating legal services activities; developing or improving a statewide food and nutrition information center or clearinghouse; developing or strengthening multi-county or statewide hunger coalitions and task forces; providing assistance to poor people, or their representatives, to attend meetings and conferences on food and nutrition issues, etc. (Note: Activities of the type described above may also be included in applications for General Community funds submitted by applicants eligible to apply for such funds).

(4) Applicants must show evidence of successful experience and competence in carrying out the kinds of activities described above. *In addition, applicants must indicate on their applications how they intend to coordinate their proposed activities with CAA's in/or adjacent to the areas they propose to serve, other CFNP grantees and the SEOO in the State(s) to be served.*

(c) *Regional Training and Technical Assistance (T. & T.A.) Projects.* (1) Public and private nonprofit organizations and agencies which meet CSA's general eligibility criteria may apply for Regional T. & T.A. funds. Regional T. & T.A. providers may operate on either a regionwide or subregional basis. (Note: CAA's and other CFNP grantees which have developed substantial expertise in administering CFNP projects are encouraged to provide technical assistance to other CFNP project operators who could benefit from such assistance. To facilitate this, CFNP applicants may include in their budget request an amount not to exceed 5 percent of their total funding request in order to pay for the travel, per diem and miscellaneous expenses incurred by the agencies providing such technical assistance).

(2) Activities proposed by T. & T.A. applicants must be designed to assist CFNP grantees in the development of skills required to effectively conduct the CFNP activities outlined earlier in this subpart and to achieve local project goals. T. & T.A. providers must also focus on assisting CAA's to make the transition from service delivery to a catalytic and advocacy role.

(3) T. & T.A. applicants must show evidence of successful experience and competence in carrying out the kinds of activities described above. In addition applicants must indicate how they intend to coordinate their proposed activities with CAA's, the SEOO and other CFNP grantees in the State(s) to be served.

(d) *Headquarters Training and Technical Assistance (T. & T.A.) Projects and Research and Demonstration (R. & D.) Projects.* (1) Public and private nonprofit organizations or agencies which meet CSA's general eligibility criteria may apply for HQ T. & T.A. and R. & D. funds.

(2) As distinct from regional T. & T.A. projects, headquarters T. & T.A. projects will focus on grantee needs that are common to a number of regions or require a national strategy. In addition headquarters T. & T.A. projects may be required to address the needs of other projects administered directly from headquarters, e.g., Indian projects.

(3) The objective of R. & D. projects is to develop new knowledge or demonstrate new hypotheses relevant to the solution of the problems of hunger and malnutrition among the poor. Activities proposed in applications for R. & D. funds should relate to activities described under the four program categories defined earlier in this subpart but should emphasize new and untried approaches to solving problems in the food and nutrition area. R. & D. projects are not intended primarily to meet the operational needs of a particular organization or the community it serves, but rather to advance the state of knowledge about the problems of hunger and malnutrition and potential solutions so as to have maximum impact on these problems nationwide.

(e) *Migrant projects.* Farmworker-governed organizations are eligible to apply under this funding category. Other organizations wishing to operate migrant projects may do so as delegate agencies of the farmworker-governed grantees. Delegate agencies should also be farmworker-governed.

(f) *Indian projects.* Indian groups whose governance is controlled by the populations to be served are eligible to apply for Indian project funds. This includes Indian nations, tribes, bands, pueblos, or other organized groups or communities, including Alaskan Native villages as defined in the Alaskan Native Claims Settlement Act who are either indigenous to the United States or who otherwise have a special relationship to the United States, or a State, through treaty agreement, Executive order, law, court order, or administrative action of the Department of Interior, except as otherwise provided by Federal law.

§ 1061.50-10 Funding.

(a) *Non-Federal share.* The non-Federal share is waived for CFNP projects (see § 1068.20 or CSA instruction 6802-3). However, grantees are expected to mobilize local and State resources throughout the life of the project.

(b) *Federal share.* Federal share as matching funds granted under section 222(a)(5) may be used to match USDA funds to support food stamp outreach projects, as well as title XX funds.

§ 1061.50-11 Application Procedures.

(a) *Required forms.* (1) *Basic forms.* (i) CSA Form 419: Summary of work program and budget (see OEO instruction 6710-1).

NOTE.—Goals and activities must be consistent with the standards of effectiveness for section 222(a)(5) projects and the general standards of title II programs outlined in CSA instruction 7850-1a and the form 419 must reflect these standards.

(ii) OEO form 25: Program account budget (see OEO instruction 6710-1).

(iii) SF-424: Federal assistance (see CSA instruction 6710-3a).

(iv) OEO form 25a: Program account budget support sheet (see OEO instruction 6710-1).

(v) OEO form 301: Summary of grant application (see OEO instruction 6710-1), for new grantees only.

(vi) CAP form 5: Application for CAP community information (see OEO instruction 6710-1), for uncapped areas.

(vii) CAP form 84: Participant/characteristics plan (see OEO instruction 6710-1).

(viii) Form 424: Federal assistance.

(2) *When delegating programs.* (i) CAP form 11: Assurance of compliance with regulations under Civil Rights Act.

(ii) CAP form 85: Administering agency funding estimate.

(iii) CAP form 87: Delegate agency basic information.

(b) *Clearinghouse review (A-95).* Applicants are reminded that applications for CFNP funds must be submitted to appropriate clearinghouses in accordance with the provisions of OMB Circular A-95. (See § 1067.10 or CSA Instruction 6710-3a.) Applicants are encouraged to submit their notification of intent to apply as soon as such determination is made.

(c) *Where to apply.*

Category of projects and send applications to:

- General community projects—Appropriate CSA Regional Office.
- Special support projects—Appropriate CSA Regional Office.
- Regional training and technical assistance—Appropriate CSA Regional Office.
- Headquarters training and technical assistance projects and research and demonstration (R. & D.) projects—CSA Headquarters.
- Migrant projects—Farmworker-governed organizations should forward applications to CSA Headquarters.
- Indian projects—Indian tribal councils and eligible urban Indian groups applications to CSA Headquarters.

NOTE.—Migrants and Indian projects are encouraged to make contact with local CAA's in/or adjacent to the areas where the projects will operate. HQ CSA will send information copies of approved applications from Indian and migrant groups to the appropriate CSA Regional Office.

§ 1061.50-12 Reporting requirements.

Grantees will follow the financial and project reporting requirements outlined in CSA instruction 6800-8 and 6800-9 respectively.

§ 1061.50-13 Current fiscal year application and review information.

The appendices to this subpart provide additional information relevant to funding CFNP projects in the current fiscal year.

APPENDIX A—FISCAL YEAR 1978 FUNDING PROCESS

1. TIMETABLE FOR ACCEPTING APPLICATIONS

Applications will be accepted from the effective date of the final rule through August 11, 1978. Applications postmarked later than August 11th will not be accepted.

2. FISCAL YEAR 1978 PROGRAM CATEGORY PRIORITIES

The program categories described in § 1061.50-7 are listed in priority order: (1) Access, (2) self-help, (3) nutrition/consumer education, and (4) crisis relief. While no minimum funding percentages are being assigned to any of the four categories, it is hoped that each State will develop strong projects in the "access" category since activities in this category are known to have, in general, the greatest impact on the problem of hunger and malnutrition among the poor. Nutrition education, which is making its first appearance as a priority item in the CFNP, may be assigned a higher priority in subsequent years when the state-of-the-art has advanced sufficiently to justify the expenditure of a larger portion of CFNP funds.

3. REVIEW PROCESS

The review process for general community and special support projects is competitive, i.e. each application will be reviewed, rated, and ranked according to the rating criteria listed in appendix B. Regional T. & T.A. funds will also be awarded on a competitive basis. The criteria for selecting T. & T.A. providers will be developed and made public shortly. The review process for all applications will be undertaken by the staff of the CSA office to which applications are submitted as indicated in § 1061.50-11 of this subpart. Regional offices' ratings, rankings, and favorable or unfavorable funding recommendations will be reviewed by CSA Headquarters before decisions become final.

Since general community, special support and T. & T.A. funds will be awarded on a competitive basis, applications from conduit organizations which propose to redistribute CFNP funds to CAA's or other organizations whose applications are not available for review by the regional office, will not be entertained.

4. ALLOCATION OF FISCAL YEAR 1978 CFNP FUNDS

(a) By project category:

	Millions
General community project	$16.0
Special support projects	2.0
Regional T. & T.A. projects	.8
Migrant projects	4.0
Indian projects	3.0

(b) By region:

	General community	Special support	T. & T.A.
Region I	$1,009,000	$126,000	$51,000
Region II	1,691,000	211,000	85,000
Region III	2,250,000	281,000	112,500
Region IV	2,498,000	312,000	124,500
Region V	2,118,000	265,000	106,000
Region VI	1,893,000	237,000	94,000
Region VII	1,012,000	127,000	51,000
Region VIII	863,000	108,000	43,000
Region IX	1,330,000	166,000	66,000
Region X	1,336,000	167,000	67,000
Totals	16,000,000	2,000,000	800,000

(c) *Allocation formula.* The allocation of general community funds to regions was arrived at as follows: First each State was allotted $100,000. Secondly, the remainder of the $16 million was divided proportionately among the regions in accordance with three

factors: (1) The number of poor in each region, (2) the number of infant deaths and (3) the number of individuals eligible for, but not participating in, the food stamp program. Third, to the new entitlements for each region resulting from this formula, two "hold harmless" factors are applied: (1) Where regions are entitled, under the new formula, to more or less than they received last year, the increments or reductions will be accomplished gradually, i.e. they will be phased in over a 2-year period. (2) No region will be reduced by more than 10 percent during fiscal year 1978 and none will be increased by more than 10 percent, except where the Director of the Office of Community Action determines such to be in the public interest.

The percentage of each region's share of the general community funds resulting from the application of the formula described above is the basis for distributing special support and T&TA funds to each region. These funds will be awarded to applicants within a region on the basis of a regionwide competition.

5. CSA FORM 419 AND ATTACHMENTS

All applicants for CFNP funds are required to submit a CSA form 419 (Summary of Work Programs and Budget). Since funds for general community, special support and regional T&TA projects will be awarded on a competitive basis it is absolutely essential that applicants for these funds provide, through the form 419 and attachments, as complete and specific a picture as possible of what they propose to do and how they intend doing it. Where space on the form 419 is insufficient, continuation sheets should be used. All required forms other than CSA form 419 must accompany the submission of form 419 for an application to be considered.

6. RATING CRITERIA

In preparing the form 419 and attachments, applicants should keep in mind the seven criteria (discussed below) which will be used by CSA reviewing teams in rating and ranking applications (See also appendix B).

(a) *Needs/analysis.* The first criterion—the analysis of needs—refers to the initial step in the planning process which lies behind the project described in the form 419. CSA instruction 6710-1, change 11, requires title II grantees to develop and maintain planning documents which contain, among other things, an analysis of the particular needs the project is addressing.

Applicants who are currently being funded by CSA and who are operating CFNP projects must attach to the form 419 that portion of the planning document which deals with the problem of malnutrition and hunger. The information should be updated where necessary. New applicants and current CSA grantees whose planning documents do not deal with the problem of malnutrition and hunger should attach to the form 419 a needs analysis to support the choice of project goals described in the form.

The needs analysis must describe the nature and extent of the needs of the poor in the community the project will serve. The analysis should indicate what efforts are currently being undertaken to meet those needs, what gaps or shortfalls there are in these efforts and the extent to which the needs or problems remain unmet or unsolved. The applicant should clearly identify, among the range of needs listed, the precise need(s) the proposed project will attack. Appropriate statistics to document the need(s) should be applied—for example, the number of persons participating in the food stamp program as compared with the number or eligible persons not participating.

The needs analysis must include a description of the process by which the needs to be addressed by the proposed project were determined, how the project goals were established, and whether and to what extent the poor participated. In determining local needs, applicants should take into account not only the views of the persons being served but national priorities and statewide needs as defined in the State needs estimate available from the regional office.

b. *Adequacy of work program and budget.* The second of the rating criteria listed in appendix B—the adequacy of the work program and budget—refers primarily to the project's goals (item 11 of form 419), the activities that will be undertaken to achieve these goals (item 13) and the budget (CSA forms 25 and 25a). The applicant must first indicate to which of the four national program categories—access, self-help, crisis relief and nutrition education—the project relates. If the applicant proposes to address more than one of the national program categories, the application must indicate the priority assigned to each (item 12).

The project's goals should be stated concisely and in quantitative terms where possible. The statement of goals should reflect a comprehensive planned work program for the entire requested program year. All specific activities to be undertaken by the grantee in order to achieve the stated goals should not only be listed but adequately described. The description of activities should indicate the relationship of the activities to the stated goals, i.e. the strategy by which the activities will be directed to actually accomplish the goals.

c. *Anticipated impact on needs.* The statement of goals should include a description of what the applicant intends to accomplish, i.e. what results or changes the applicant intends to bring about in relation to the problem to be solved. The anticipated impact of the project should be stated in specific and measurable terms and should include the number of persons to be served, the extent to which their nutritional needs will be met and the extent to which unmet needs will remain after the project is completed.

d. *Consistency with legislative purposes (general standards of effectiveness).* The project's goals and the activities undertaken in pursuit of these goals must conform not only to the national program categories described in § 1061.50-7 but also to at least three of the title II purposes embodied in the general standards of effectiveness described in § 1061.50-6. Each applicant must list in item 11 of CSA form 419, along with the project goals, the particular specific and general standards of effectiveness which the project will address. In addition, the applicant should, in describing in item 13 the activities for each project goal, clearly indicate exactly how these standards of effectiveness will be addressed. In other words the applicant must state how the project will (1) strengthen the community's planning and coordinating capabilities and/or (2) improve service delivery systems and/or (3) make use of innovative approaches and/or (4) involve maximum feasible participation by the poor in the planning and implementation of the project and/or (5) mobilize a broad range of resources. As stated in § 1061.50-8, the formation of alliances with other anti-hunger groups exemplifies one or more of the standards of effectiveness and will be a factor in rating applications.

e. *Catalytic nature of the project.* The emphasis, in the expenditure of fiscal year 1978 CFNP funds, will be on catalytic activity rather than on direct service delivery (see § 1061.50-4). The applicant should, therefore, in the statement of project goals and activities, describe the extent to which, and the manner in which, the project will stimulate other institutions, organizations or groups to become involved in the effort to eliminate hunger and malnutrition among the poor. Delegation to another agency of responsibility for operating a CFNP project does not, by itself, qualify as a catalytic activity.

f. *Ability of applicant to perform.* CSA instruction 6800-9 requires title II grantees to submit a semi-annual and annual project progress review report (CSA form 440). This report provides an analysis of the accomplishments in relation to each goal in the grantee's currently approved work program, and includes an assessment of grantee status with respect to general and/or specific standards of effectiveness applicable to each goal.

Since the ability of applicants to successfully carry out their proposed work program is one of the important rating criteria, applicants who are currently operating (or have operated in the past) a CFNP project must attach to the form 419 a copy of the CFNP portion of the most recent form 440, updating it where necessary. CSA grantees who have never operated a CFNP project must attach to the form 419 that portion of their most recent form 440 which relates to a project they have operated that is similar to CFNP projects. Applicants not previously funded by CSA should attach to the form 419 a self-evaluation or third party evaluation of a project they have been operating that is similar to CFNP projects, along with a brief statement summarizing their overall administrative ability and general performance record.

g. *Consistency with national priorities.* In keeping with established priorities, projects which address the first two national priorities—Access and Self-Help—will be given extra points in the rating process. This does not mean applicants cannot or ought not to apply for projects in the other two categories—nutrition education and crisis relief—if it is determined that such projects are more suitable to, or address a more urgent need in, the community in which the project will be located. In some communities self help activities, as a result of emphasis in prior years, may be much more firmly implanted than in other communities. The burden is on the applicant for projects in the crisis relief and nutrition education categories (1) to show that the need for such projects in the applicant's community is relatively great and (2) to strengthen those aspects of the project which correspond to the other rating criteria so as to improve the project's overall competitive standing.

7. TRAINING AND TECHNICAL ASSISTANCE

The applicant's need for training and technical assistance in carrying out the project should be carefully described in item 15 of the form 419. It is presumed that most, if not all, projects will need some form of technical assistance. The training and

technical assistance plans developed by the regions and headquarters will depend to a large extent upon the statement of need supplied by applicants on the form 419.

8. PROGRAM ACCOUNTS

For the purposes of the fiscal year 1978 funding process, the following program account numbers for the national program categories should be entered in item 16 of the form 419:

Program Account and *National Program Category*

12—Access.
13—Self-help.
15—Nutrition education.
16—Crisis relief.

If the applicant proposes to address more than one national program category in the same project, only one form 419 is needed for the project but the goals and activities falling in separate program categories must be clearly separated from each other on the form 419 and a separate budget (forms 25 and 25a) should be attached for each program account.

RATING CRITERIA	POINTS
1. Analysis of Needs (10 points) • The nature and extent of the problem is adequately described and documented (0-10 points)	
2. Adequacy of Work Program and Budget (15 points) • Project has specific and measurable goals (0-5 points) • Activities are adequately described and appropriately related to goals (0-5 points) • Budget is appropriate and adequately documented (0-5 points)	
3. Anticipated Impact on Needs (15 points) • Impact is minimal (0-5 points) • Impact is moderate (6-10 points) • Impact is substantial (11-15 points)	
4. Consistency with Legislative Purposes (General Standards of Effectiveness) (25 points) • Strengthens community's planning and coordination capabilities (0-4 points); evidences cooperation between CAA's and non-CAA's (0-3 points) • Improves service delivery systems (0-4 points) • Is innovative (0-4 points) • Involves maximum feasible participation of poor (0-4 points) • Mobilizes a broad range of resources (0-6 points)	
5. Catalytic Nature of Project (10 points) • Project stimulates the delivery of services through institutions other than the grantee (0-10 points)	
6. Ability of Applicant to Perform (20 points) • Assessment of past CFN or other relevant projects (0-10 points) • Assessment of applicant's overall administrative ability and general track record (0-10 points)	
7. Consistency with National CFN Priorities (5 points) • Addresses Access (4 points) • Addresses Self Help (1 point)	
TOTAL POINTS: 100	

APPENDIX B

APPENDIX C

Applicants for general community, special support and regional T&TA projects should address requests for forms and should submit their applications to the appropriate regional office listed below (the names and telephone numbers of CFNP regional coordinators are also shown):

Mr. Ivan Ashley, Regional Director, CSA Region I, E-400, John F. Kennedy Federal Building, Boston, Mass. 02203, phone 617-223-4080.
CFNP Coordinator: Frank Rothman, phone 617-223-3693.

Boston—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.

Mr. William A. White, Regional Director, CSA Region II, 26 Federal Plaza, 32nd Floor, New York, N.Y. 10007, phone 212-264-1900.
CFNP Coordinator: Helen Jacobs, phone 212-264-3944.

New York—New Jersey, New York, Puerto Rico, Virgin Islands.

Dr. W. Astor Kirk, Regional Director, CSA Region III, 3535 Market Street—Gateway Bldg., Philadelphia, Pa. 19104, phone 215-596-6001.
CFNP Coordinator: Norma Clarkson, phone: 215-569-6130.

Philadelphia—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.

Mr. William "Sonny" Walker, Regional Director, CSA Region IV, 101 Marietta Street, N.W., Atlanta, Ga. 30303, phone 404-242-2717
CFNP Coordinator: Cathrilla Davis, phone 404-242-2800.

Atlanta—Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.

Mr. Glenwood Johnson, Regional Director, CSA Region V, 300 South Wacker Drive, 24th Floor, Chicago, Ill. 60606, phone 312-353-5562.
CFNP Coordinator: James Channel, phone 312-353-5988.

Chicago—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

Mr. Ben Haney, Regional Director, CSA Region VI, 1200 Main Street, Dallas, Tex. 75202, phone 214-749-1301.
CFNP Coordinator: Elton Ford, phone 214-729-6139.

Dallas—Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

Mr. Wayne Thomas, Regional Director, CSA Region VII, 911 Walnut Street, Kansas City, Mo. 64106, phone 816-758-3761.
CFNP Coordinator: Grace Ledwidge, phone 816-758-3561.

Kansas City—Iowa, Kansas, Missouri, Nebraska.

Mr. David Vanderburgh, Regional Director, CSA Regional VIII, 1961 Stout Street, Federal Building, Denver, Colo. 80294, phone 303-327-4767.

CFNP Coordinator: Richard Swenson, phone 303-327-3993.

Denver—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.

Mr. Alphonse Rodriquez, Regional Director, CSA Region IX, 450 Golden Gate Avenue, Box 36008, San Francisco, Calif. 94102, phone 415-556-6737.
CFNP Coordinator: Robert Williams, phone 415-556-6737.

San Francisco—Arizona, California, Hawaii, Nevada, Trust Territories.

Mr. John Finley, Regional Director, CSA Region X, 1321 Second Avenue, Seattle, Wash. 98101, phone 206-399-4910.
CFNP Coordinator: Harold Whitehead, phone 206-399-4944.

Seattle—Alaska, Idaho, Oregon, Washington.

[FR Doc. 78-19587 Filed 7-13-78; 8:45 am]

[4810-22]

Title 19—Customs Duties

CHAPTER I—U.S. CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

[T.D. 78-241]

PART 101—GENERAL PROVISIONS

Change in the Field Organization of the Customs Service

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: The document changes the field organization of the Customs Service by extending the existing port limits of the customs port of entry of Puget Sound, Wash., to include the area of Kenmore Air Harbor on Lake Washington. This change is needed to ease traffic congestion and to reduce the possibility of a seaplane and boat collision at Friday Harbor, Washington.

EFFECTIVE DATE: July 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert Schenarts, Inspection and Control Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-8151.

SUPPLEMENTARY INFORMATION:

BACKGROUND

PUGET SOUND, WASH.

All seaplane traffic entering the United States from Canada in the Pacific Northwest presently is processed by customs at the Friday Harbor, Wash., port of entry (region VIII). Customs also processes recreational and commercial watercraft at Friday Harbor. Due to a tremendous increase in both seaplane and watercraft traffic, significant additional pressure has been placed on customs port facilities in the area. Moreover, the mix of seaplanes and watercraft in the relatively small harbor has caused concern for safety. To ease the traffic problems and reduce the possibility of a seaplane and boat collision, the Federal Aviation Administration, the Washington State Aeronautics Commission and the Friday Harbor Seaplane Owners Association ("Association") have determined that it is advisable to establish an additional clearance site for seaplanes at Kenmore, Wash.

In response to a request from the association, customs is extending the limits of the Puget Sound port of entry to include the area of Kenmore Air Harbor on Lake Washington to provide an alternate site for customs processing of seaplanes.

As extended, the geographical boundaries of the Puget Sound, Wash., port of entry will include the following:

The ports of Seattle, Aurcortos, Hollington, Everett, Friday Harbor, Nash Bay, Olympia, Port Angeles, and Port Townsend; the territory of Tacoma beginning at the intersection of the westernmost city limits of Tacoma and The Narrows and proceeding in an easterly, then southerly, then easterly direction along the city limits of Tacoma to its intersection with Pacific Highway (U.S. Route 99), then proceeding in a southerly direction along Pacific Highway to its intersection with Union Avenue Extended and continuing in a southerly direction along Union Avenue Extended to its intersection with the northwest corner of McChord Air Force Base, then proceeding along the northern, then western, then southern boundary of McChord Air Force Base to its intersection, just west of Lake Mondress, with the northern boundary of the Fort Lewis Military Reservation, the proceeding in an easterly direction along the northern boundary of the Fort Lewis Military Reservation to its intersection with Pacific Avenue, then proceeding in a southerly direction along Pacific Avenue to its intersection with National Park Highway, the proceeding in a southeasterly direction along National Park Highway to its intersection with 224th Street East, then proceeding in an easterly direction along 224th Street East, to its intersection with Meridian Street South, then proceeding in a northerly direction along Meridian Street to the northern boundary of Pierce County, Wash., then proceeding in a westerly direction along the northern boundary of Pierce County to its intersection with Puget Sound, then proceeding in a generally southwesterly direction along the banks of the East Passage of Puget Sound, Commencement Bay, and The Narrows to the point of intersection with the westernmost city limits of Tacoma, including all points and places on the southern boundary of the Juan de Fuca Strait from the eastern port limits of Nash Bay to the western port limits of Port Townsend, all points and places on the western boundary of Puget Sound, including Hood Canal, from the port limits of Port Townsend to the northern port limits of Olympia, all points and places on the southern boundary of Puget Sound from the port limits of Olympia to the western port limits of Tacoma, and all points and places on the eastern boundary of Puget Sound and contiguous waters from the port limits of Tacoma north to the southern port limits of Bellingham; and the

area comprising sections 1, 2, 12, 13 of Township 26 North, Range 3 East, West Meridian, and section 1 to 18 inclusive of Township 26 North, Range 4 East, West Meridian, all in the State of Washington.

This amendment is part of a continuing program to obtain more efficient use of customs personnel, facilities, and resources, and to provide better service to carriers, importers, and the public.

AMENDMENT TO THE REGULATIONS

To reflect the change, the table in section 101.3 of the Customs Regulations (19 CFR 101.3) is amended by inserting "Kenmore Air Harbor," between "Friday Harbor," and "Noah Bay" in the parenthetical expression which appears after "PUGET SOUND" and by substituting "T.D. 78-241" for "T.D. 75-130" in the column headed "Ports of entry" in the Seattle, Washington, customs district (region VIII).

AUTHORITY

This change is made under the authority vested in the President by section 1 of the act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949-1953 Comp., Ch. II) and pursuant to authority provided by Treasury Department Order No. 190, Rev. 15 (43 FR 11884).

INAPPLICABILITY OF NOTICE AND DELAYED EFFECTIVE DATE REQUIREMENTS

The amendment merely reflects a change in the Customs Service field organization and imposes no duty or burden on the public. There is an immediate need to provide an alternate seaplane clearance site at the earliest possible date in the Puget Sound, Washington, area to reduce the possibility of a seaplane and boat collision resulting from a plane having to land at heavily trafficked Friday Harbor for customs processing. For these reasons, customs believes that a notice of proposed rulemaking and request for public comment with respect to the amendment is unnecessary and that there is good reason for the amendment to become effective on the earliest possible date under 5 U.S.C. 553.

DRAFTING INFORMATION

The principal author of this document was Harold M. Singer, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other customs offices participated in its development.

Dated: July 11, 1978.

RICHARD J. DAVIS,
Assistant Secretary of the Treasury.

[FR Doc. 78-19683 Filed 7-13-78; 10:32 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[3410-30]

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

[7 CFR Part 282]

DEMONSTRATION, RESEARCH, AND EVALUATION PROJECTS

Workfare Demonstration Project

NOTE.—This document originally appeared in the FEDERAL REGISTER for Wednesday, July 12, 1978. It is reprinted in this issue to meet requirements for publication on an assigned day of the week. (See OFR notice 41 FR 32914, August 6, 1976.)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rules and Notice of Intent.

SUMMARY: This proposed rulemaking discusses the Workfare Demonstration Project which is mandated by section 17(b)(2) of the Food Stamp Act of 1977. Under this project, food stamp work registrants will be required to perform work in a public service capacity in exchange for the coupon allotment to which their household is otherwise normally entitled.

The Notice of Intent announces the intention of the Departments of Agriculture and Labor to jointly conduct the project and further seeks proposals for project operation from eligible political subdivisions or groupings thereof wishing to take part in the project.

DATES: Comments must be received on or before August 12, 1978. All comments, suggestions, or objections received by this date will be considered before the final notice is issued. Proposals for project operations should be received no later than 30 days following publication of final rulemaking.

ADDRESSES: Interested persons may submit written comments, suggestions, or objections regarding the proposed rulemaking to Nancy Snyder, Acting Deputy Administrator for Family Nutrition Programs, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250. Comments, suggestions, or objections will be opened to public inspection at the office of the Acting Director during regular business hours (8:30 a.m.-5 p.m.) at 500 12th Street SW., Washington, D.C. 20250, Room 658.

FOR FURTHER INFORMATION CONTACT:

Keith Spinner, Acting Division Director, Program Development Division, U.S. Department of Agriculture, Washington, D.C. 20250, telephone 202-447-8325.

SUPPLEMENTARY INFORMATION:

(a) *Authority.* Section 17(b)(2) of the Food Stamp Act of 1977 mandates that the Department of Agriculture and Labor jointly conduct a demonstration project involving the performance of work, in a public service capacity, in exchange for food stamp benefits. Under this project, which is hereafter referred to as workfare, household members subject to the work registration requirement whose total household earned income is less than their household's coupon allotment will be subject to participation in workfare. The monthly work hour requirement will be determined by dividing the value of the household's coupon allotment, minus any nonexcludable earned income the household receives, by the Federal minimum wage. Project operations will commence in conjunction with implementation of the Act. All references cited within these regulations are to the proposed food stamp regulations for implementation of Pub. L. 95-113 which were published in the FEDERAL REGISTER on May 2, 1978, at 43 FR 18874-18958.

(b) *Areas of operation.* The Act mandates that the project be conducted in one urban and one rural area in each of the seven FNS administrative regions. The Notice of Intent, which follows these proposed regulations, solicits proposals from political subdivisions or groupings thereof wishing to take part in the project. Proposals must be received within 30 days following publication of final regulations resulting from this rulemaking. The sites selected for project operation will be subsequently published in the FEDERAL REGISTER.

(c) *Criteria for participation.* The Act requires that under the demonstration project, all persons subject to the full-time work registration requirement, whose total household earned income is less than the household's coupon allotment, and who are unable to secure employment in the private or public sector within 30 days from the date of initial work registration, be subjected to participation in workfare. The act further stipulates that no workfare job offer is to be made until all public service jobs supported under the Comprehensive Employment and Training Act of 1973 (CETA) are filled. The legislative history (see H.R. 95-464, 95th Cong., 1st sess., p. 371) emphasizes that the purpose of this provision is to assure that workfare jobs supplement and not supplant other job programs. In order to ensure the continuing operation of the workfare project and provide maximum validity to project results, while at the same time carrying out the intent of Congress that workfare employment supplement rather than supplant other job programs, the Department proposes that a workfare job can only be offered if the CETA sponsor is making every effort to fill all available openings and the potential workfare participant is not found to be qualified for available CETA job slots. This caveat on the offer of workfare employment, taken in conjunction with the requirement contained in the Notice of Intent that the workfare sponsor be located with a CETA prime sponsor who is basically fulfilling its public service employment hiring schedule, should insure increased job availability.

(d) *Conditions of employment.* The act specifically provides that persons fulfilling a workfare obligation be ensured of many of the same benefits and protections for themselves and others which exist under the Comprehensive Employment and Training Act of 1973 (CETA). These assurances are enumerated within the proposed regulations. The Department has also proposed that workfare employment meet the normal suitability criteria used in conjunction with the work registration requirement and set forth in 7 CFR 273.7(i). Further, since workfare is intended to supplement normal work registration requirements, and since the Department believes Congressional intent is to place greatest emphasis on placing recipients in regular jobs and thereby reducing their need for food stamps, the Department also proposes that in those instances where workfare requirements conflict with the additional work requirements established in § 273.7(e), the work requirements would take precedence over the workfare requirements. Consequently, a recipient involved in workfare who is referred to and offered a suitable private sector job would be required to accept the job. In the highly unusual circumstance that workfare employment alone or workfare employment combined with other employment exceeds an average of 30

hours of employment a week, the workfare participant would not be subject to the job search requirements established in § 273.7(d) of the proposed regulations due to the limited time available for such activities.

(e) *Failure to comply.* Under the wording of the act, the required workfare participant shall be ineligible to participate in the food stamp program during any month in which he or she refuses to accept a workfare job offer. The Department proposes to define refusal to accept public service employment as refusal, without good cause, to accept an offer of public service employment; refusal, without good cause, to report for job scheduling; or failing, without good cause, to complete the entire workfare hour requirement. For the purpose of this project, the Department proposes that good cause include becoming exempt from the work registration requirement (see sec. 6(d) of the act) or becoming exempt from workfare participation due to the household's earned income exceeding the value of the coupon allotment since the Act makes it clear that under these circumstances the workfare requirement would not apply.

While the act makes reference to the ineligibility of noncomplying household members during any month in which workfare employment is refused, the Department believes the only feasible interpretation of the provision would require that the disqualification take effect in a month following the actual month of refusal since, in most instances, the household will already have received its full allotment for the month of refusal by the time refusal takes place. In addition, the Department believes it is necessary, in order to afford constitutional due process, that participants who face disqualification for refusing to accept workfare employment be provided a normal 10-day notice of adverse action prior to the time the disqualification takes effect, and continued benefits during the pendency of a fair hearing if such a hearing is requested. These due process procedures would likewise necessitate that any disqualification take effect in a month subsequent to the month of refusal because in some instances the 10-day notice period would not have expired prior to the issuance of the subsequent month's allotment and in most instances a fair hearing would not have been concluded prior to that time. Hence, the Department has proposed that the State agency, upon learning of a required workfare participant's refusal, would issue a notice of adverse action in accordance with normal administrative procedures. The disqualification would take effect during the month following the expiration of the notice or, where a fiar hearing is requested, during the month following a fair hearing decision adverse to the participant. In those instances where a household member's disqualification is based upon failing to complete the entire workfare hours requirement, the household would be entitled during the month of the disqualification to benefits that are in excess of the allotment for the remaining household members only if the value of hours worked under workfare, plus other nonexcludable earned income the household receives, exceeds the value of the coupon allotment as computed without the disqualified member. The amount of additional benefits would be the difference between these values.

(f) *State agency responsibilities.* In addition to their normal administrative responsibilities as established in 7 CFR, it is proposed that in those locations where workfare projects are operational, the State agency shall be responsible for: (1) identifying potential workfare participants; (2) informing such persons about the project and the penalty for noncompliance; (3) forwarding information to the workfare sponsor on potential participants and their workfare hour requirements; and (4) taking disqualification action in instances of refusal. The workfare sponsor, as established in the Notice of Intent, will be responsible for providing job scheduling, public service employment, and forwarding information on such employment to the State agency.

On May 2, 1978, at 43 FR 18957, it was proposed to add 7 CFR Part 282. As proposed, Part 282 contained §§ 282.1 through 282.6. It is now proposed to add §§ 282.7 through 282.10 as follows:

§ 282.7 [Reserved]

§ 282.8 [Reserved]

§ 282.9 [Reserved]

§ 282.10 Workfare demonstration project.

(a) *Authority.* Section 17(b)(2) of the Act mandates that the Secretaries of the United States Department of Agriculture and Labor jointly conduct a demonstration project involving the performance of public service work by food stamp participants subject to the work registration requirement.

(b) *Purpose.* The purpose of the workfare demonstration project is to determine the feasibility of having food stamp participants perform work in a public service capacity in return for the food stamp benefits to which the household is otherwise entitled.

(c) *Areas of operation.* A workfare demonstration project will be conducted in one urban and one rural area in each of the seven FNS administrative regions. The selection of project sponsors will be made by the Departments of Agriculture and Labor based on applications submitted by political subdivisions or groupings thereof wishing to participate in the project.

(d) *Criteria for participation.* (1) A member of a food stamp household in a selected project area will be subject to participation in the workfare demonstration project if the member meets the following criteria:

(i) He or she is required to register for full-time work under the terms of § 273.7(a);

(ii) The household's total earned income, as defined in § 273.9(b)(1), is less that the household's coupon allotment;

(iii) He or she has been unable to secure a job in the private or public sector after 30 days from the date of initial registration for work as required in § 273.7(a); and

(iv) All public service jobs supported under the Comprehensive Employment and Training Act of 1973 (CETA) have been filled. For the purpose of this project all such CETA jobs will be considered filled if: (A) the CETA sponsor is making every effort to fill all available openings; and (B) the CETA sponsor has determined that the individual who is potentially subject to workfare is not qualified for suitable CETA jobs that are open.

(2) Households containing more than one work registrant will have the option of deciding which member or members will fulfill the workfare requirement. However, in instances of refusal, the remaining household member(s) subject to work registration shall be subject to workfare participation.

(e) *Conditions of employment.* (1) No participant shall be required to accept an offer of public service employment if such employment fails to meet the criteria established in § 273.7 (i)(1), (iii), (iv), and (i)(2)(i)(ii), (iv) and (v), provided that daily commuting time of less than 1 hour shall not make an offer of employment unsuitable;

(2) The total number of required work hours each month will be determined by dividing the total coupon allotment, minus any nonexcludable earned income the household receives, by the Federal minimum wage;

(3) In no instance shall the total number of hours worked, combined with any other employment, exceed 40 hours a week;

(4) If the workfare participant is unable to report for job scheduling or unable to appear for scheduled workfare employment due to compliance with the additional work requirements established in § 273.7(a) (1), (2), (3), or (4), such inability shall not be considered a refusal to accept workfare employment. The workfare participant shall immediately inform the workfare sponsor of the time conflict and the workfare sponsor shall reschedule the missed activity if possible;

(5) During any month in which the average hours of workfare employment combined with any other hours of employment equal 30 hours or more per week, the workfare participant shall not be subect to the job search requirements of § 273.7(d);

(6) Compensation shall be at 100 percent of the Federal minimum wage, to be paid by the Federal Government in food stamps, until the household's coupon allotment (minus any nonexcludable earned income the household receives) is earned;

(7) All persons employed in workfare jobs will be assured of workmen's compensation, health insurance, unemployment insurance, and other benefits at the same levels and to the same extent as other employees of the employer, and to working conditions and promotional opportunities neither more nor less favorable than other employees similarly employed are provided;

(8) The provision of section 2(a)(3) of Pub. L. 89-286 (relating to health and safety conditions) shall apply to the workfare program; and

(9) Where a labor organization represents employees who are engaged in similar work in the same area to that proposed to be performed under this program for which an application is being developed for submission, such organization shall be notified and afforded a reasonable period of time prior to the submission of the application in which to make comments to the applicant and to the Secretary of Labor.

(f) *Failure to comply.* (1) Household members subject to the workfare requirement who, without good cause, refuse to accept an offer of public service employment; refuse to report for job scheduling; or fail to complete the entire work requirement, shall be disqualified from participation in the food stamp program for a period of 1 month after opportunity is given for a fair hearing.

(2) Good cause, for the purpose of this demonstration project, shall be defined as:

(i) Circumstances beyond the member's control, such as, but not limited to, illness, the illness of another household member requiring the presence of the member, a household emergency, or unavailability of transportation; or

(ii) Becoming exempt from the work registration requirement under the terms established in § 273.7(b); or

(iii) Becoming exempt from workfare participation due to the household's earned income exceeding the value of the household's coupon allotment.

(3) Households containing a workfare participant who has completed part of his or her workfare obligation, but is disqualified for failure to complete the entire workfare requirement, shall be entitled to those benefits in excess of the allotment for the remaining household members if the disqualified member did work a sufficient number of hours in the month. Entitlement shall be determined by comparing the value of hours worked by the disqualified workfare participant (computed at the Federal minimum wage), plus other nonexcludable earned income received by the household, to the household's entitlement when the workfare participant is disqualified for Program participation. If the value of the hours worked plus other earned income is greater, the household shall be entitled to benefits in the amount of the difference.

(g) *State agency responsibilities.* The State agency will be responsible for undertaking the following activities:

(1) Determining, during the certification process, those work registrants subject to participation in workfare;

(2) Informing potential participants about the nature of the project and the penalty for non-compliance;

(3) Forwarding information to the workfare sponsor on required work hours for each workfare participant, and any subsequent information affecting the member's workfare obligation, such as a change in the required work hours or a change resulting in the inapplicability of the workfare requirement;

(4) Taking the following actions, as appropriate, on information received from the workfare sponsor:

(i) Upon notification that the participant has failed to comply with the workfare requirement (see § 282.10(f)(1)), the State agency shall issue a notice of adverse action in accordance with § 273.13.

(ii) If the household member establishes good cause for noncompliance, as defined in § 282.10(f)(2), the requirement for further workfare participation shall be dependent on the continuing applicability of the workfare requirement to the member.

(iii) If a notice of adverse action is issued and no appeal is filed, the State agency shall take action to disqualify the noncompliant household member for a calendar month following expiration of the notice. During the month of disqualification, no workfare job referrals can be made since the disqualified member is not a member of a food stamp household for that month. If, however, in the subsequent month, the household is stil certified for participation and the member is still subject to the workfare requirement, the workfare job referral process shall be reinstated.

(iv) If a fair hearing is requested, any action to disqualify the noncomplying household member will be suspended until completion of the hearing. If the hearing results in a decision upholding the disqualification, the period of disqualification shall be effective in the first month following the decision.

(v) If disqualification resulted from failure to complete the entire workfare requirement, the State agency shall provide benefits, where appropriate, under the conditions of § 282.10(f)(3).

Notice of Intent

In accordance with section 17(b)(2) of the Food Stamp Act of 1977, (Title XIII, Pub. L. 95-113), the Secretaries of Agriculture and Labor jointly announce their intention to conduct a demonstration project, hereafter called workfare, involving the performance of work in exchange for food stamp benefits. Under this project, members of food stamp households, subject to the work registration requirement, whose total household earned income is less than their household's coupon allotment, will be required to work in a public service capacity if they are unable to secure work in the private or public sector. The required hours of employment will be determined by dividing the household's coupon allotment, minus any nonexcludable earned income the household receives, by the Federal minimum wage. Compensation will be "paid" in the form of the monthly coupon allotment to which the household would normally be entitled. Persons required to participate in the workfare project who refuse to accept workfare employment will not be eligible to participate in the Food Stamp Program for a period of one month following each refusal. The workfare project will be conducted in one urban and one rural political subdivision or groupings thereof in each of the seven FNS/USDA administrative regions. Actual project operations are targeted to begin on or about January 1, 1979.

This notice further seeks proposals for project operation from political subdivisions or groupings thereof wishing to participate in the Workfare Demonstration Project. Such proposals shall describe in detail how the political subdivision, working with the welfare agency and other cooperating agencies involved in the project, shall fulfill the provisions of the Act governing the Workfare Demonstration Project which are enumerated below.

A. Basic Operational Requirements

1. Household members, subject to the work registration requirement, whose total household earned income is less than the household's coupon allotment, and who are unable to find work in the private or public sector after 30 days from initial registration for work, shall be subject to participation in workfare in addition to all other work registration requirements.

2. No workfare job shall be offered until all public service jobs supported under the Comprehensive Employment and Training Act of 1973 (CETA) within that subdivision have been filled. For the purpose of this project, all CETA public service jobs will be considered filled if: (a) the CETA sponsor is making every effort to fill all available openings; and (b) the CETA sponsor has determined that the individual who is potentially subject to workfare is not qualified for suitable CETA slots that are open.

3. Compensation for workfare employment shall be paid in the form of the coupon allotment to which the household is normally entitled.

4. The number of hours a workfare participant is required to work shall be determined by dividing the household's total coupon allotment, minus any nonexcludable earned income the household receives, by the Federal minimum wage rate.

5. A workfare participant shall not be eligible to participate in the Food Stamp Program for a period of one month for refusing to accept a workfare job offer. Refusal, for the purposes of this demonstration project, shall be defined as actual refusal, without good cause, to accept workfare employment; refusal, without good cause, to report to the workfare sponsor for job scheduling; or refusal, without good cause, to complete the entire workfare hour requirement.

B. WORKFARE SPONSORS

1. *Eligibility.* To participate in the project, potential workfare sponsors must meet the following requirements:

(a) Be a political subdivision or grouping thereof (i.e., a State or unit of local government or combination of local governments), currently operating a public service employment program under State or local general assistance programs, the Comprehensive Employment Training Act (CETA), or other legislation. This includes those political subdivisions sponsoring general assistance workfare programs.

(b) Be located in a political subdivision with a CETA prime sponsor who is basically fulfilling its public service employment hiring schedule.

(c) Have the capability for effectively operating and administering a workfare project under the terms and conditions established in the Food Stamp Act, this Notice, and the final regulations.

2. *Responsibilities.* The workfare sponsor shall be responsible for:

(a) Determining which agencies within its jurisdiction shall be used in the various administrative functions of the project.

(b) Establishing an operational system to fulfill the functions of the workfare project. At a minimum, the system shall:

(1) Provide for communication between involved agencies;

(2) Ensure the establishment of a sufficient number and variety of short-term public service jobs to allow testing of the workfare concept. The potential number of workfare participants can be obtained from the welfare agency;

(3) Monitor potential participants identified by the welfare agency. If they are unable to secure a job in the private sector after 30 days from the date of initial work registration, ascertain whether all public service jobs supported under CETA are filled; (See A.2.)

(4) Notify workfare participants of job scheduling. Such notification shall include the number of hours to be worked based on the household's food stamp entitlement for the month and the penalty for noncompliance;

(5) Provide for monthly work scheduling for each workfare participant based on the work hour requirements established by the welfare agency;

(6) Ensure early reporting to the welfare agency on those workfare participants failing to report for job scheduling;

(7) Assign workfare participants to workfare jobs and ensure the provison of the necessary supervision;

(8) Monitor the hours of work of workfare participants;

(9) Have records maintained which identify the name of the sponsoring agency; the participant's name and food stamp certification number; the type of work to be performed; the period covered by the time report; and any additional benefits provided by the sponsoring agency;

(10) Ensure monthly reporting on the total number and type of workfare slots available; the number of workfare slots filled by participants in the food stamp workfare project; the total number and names of participants that fully complied with the workfare requirement, including the number of hours worked; the total number and names of referrals refusing to participate in workfare; and the total number and names of persons who failed to complete the total work requirement, including the number of hours worked. Such reports will be directed to the welfare agency and elsewhere, as required; and

(11) Ensure that all necessary reports are submitted as required.

(c) Establish a monitoring system to ensure that cooperating agencies are carrying out their responsibilities as established for the workfare project.

3. *Assurances.* All potential workfare sponsors shall provide the following assurances:

(a) They have the legal authority to conduct the project;

(b) They will be responsible for the development and execution of the project;

(c) They will comply with all requirements of the Food Stamp Act, this Notice, and the final regulations, as promulgated, which are applicable to the project;

(d) That special consideration in filling workfare jobs will be given to unemployed persons who are the most severely disadvantaged in terms of the length of time they have been unemployed and their prospects for finding employment without assistance. Such special consideration shall not authorize the hiring of any person when any other person is on lay-off from the same or any substantially equivalent job;

(e) That no job vacancy will be created by the action of an employer in laying off or terminating the employment of any regular employee in anticipation of filling the vacancy with a workfare individual;

(f) That there will be planning for and training of supervisory personnel in working with participants;

(g) That the applicant sponsor will, where appropriate, maintain or provide linkages with upgrading and employment and training programs for the purposes of: (1) providing those persons employed in workfare jobs who want to pursue work with the employer, in the same or similar work, the opportunities to do so and to find permanent upwardly mobile careers in that field; and (2) providing those persons so employed who do not wish to pursue permanent careers in such field with opportunities to seek, prepare for, and obtain work in other fields; and

(h) That the jobs in each promotional line in no way infringe upon the promotional opportunities which would otherwise be available to regular employees and that no job will be filled in other than an entry level position in each promotional line until applicable personnel procedures and collective bargaining agreements have been complied with.

4. *Conditions of participation.* Sponsors of workfare shall ensure compliance with the following conditions:

(a) Workfare will result in an increase in employment opportunities over those opportunities which would otherwise be available; will not result in the displacement of currently employed workers (including partial displacement such as a reduction in the hours of non-overtime work or wages or employment benefits); will not impair existing contracts for services or result in the substitution of Federal for other funds in connection with work that would otherwise be performed and will not substitute public service workfare jobs for existing federally-assisted jobs.

(b) Compensation shall be at 100 percent of the Federal minimum wage, to be paid by the Federal government

in food stamps until the household coupon allotment (minus any nonexcludable earned income) is earned. However, all persons employed in workfare jobs will be assured of workmen's compensation, health insurance, unemployment insurance and other benefits at the same levels and to the same extent as other employees of the employer and to working conditions and promotional opportunities neither more nor less favorable than other persons similarly employed enjoy. Costs associated with such coverage shall be borne by the workfare sponsor. Work-related expenses, such as transportation costs, may be provided by workfare sponsors at their discretion, but only from non-Federal funds.

(c) The provisions of section 2(a)(3) of Pub. L. 89-286 (relating to health and safety conditions) shall apply to the workfare program.

(d) Where a labor organization represents employees who are engaged in similar work in the same area to that proposed to be performed under this program for which an application is being developed for submission, such organization shall be notified and afforded a reasonable period of time prior to the submission of the application in which to make comments to the applicant and to the Secretary of Labor.

(e) Conditions of employment or training will be appropriate and reasonable in the light of such factors as the type of work, geographical region, and proficiency of the participant.

C. WELFARE AGENCY

1. Responsibilities of the welfare agency in localities in which a workfare project is operating shall be to:

(a) Establish a procedure within the food stamp eligibility determination process to identify potential workfare participants. Explain to such households, at the time of certification, the project's operation and the penalty for non-compliance.

(b) Identify the total number of hours to be worked based on the household's entitlement, minus any nonexcludable earned income the household receives. Such information, in addition to any subsequent information affecting the member's workfare obligation, shall be transmitted as directed by the workfare sponsor.

(c) Receive preliminary information on workfare participants reporting to the job site and, at the end of the month, final information on the number of hours worked.

(d) Take action on information received. In instances of refusal without good cause, i.e., failure to accept a workfare job offer, failure to report for job scheduling, or failure to complete the entire work requirement, the non-complying household member shall be subject to the penalty established in § 282.10(f) of the implementing regulations.

(e) Maintain records on:

(1) The number of persons referred to workfare employment;

(2) The number of persons complying with the workfare requirements;

(3) The number of persons refusing to accept an offer of public service employment;

(4) The number of persons failing to appear for job scheduling;

(5) The number of persons failing to complete the entire work requirement; and

(6) Such other records as deemed appropriate.

2. *Assurances.* The participating welfare agency shall provide assurances that it will comply with all applicable requirements of the Food Stamp Act; this Notice; and final regulations, as promulgated.

D. FEDERAL FINANCIAL PARTICIPATION

There will be no Federal cost-sharing for any administrative or employee benefit costs incurred by the workfare sponsor. Federal financial particiation shall be limited to payment in food stamps of the coupon allotments to the participating household.

E. RECORDS

All records pertaining to the Workfare Demonstration Project shall be available to USDA and DOL representatives or their designees for purposes of inspection and review. Such records shall be maintained for a period of three years from the date of project completion, or longer if requested in writing by USDA or DOL.

F. APPLICATIONS

Applications shall be submitted in an original and two copies and shall be received by the Deputy Administrator, Family Nutrition Programs, Food and Nutrition Service, USDA, 500 12th Street SW., Washington, D.C. 20250, within 30 days following publication of the final regulations governing the workfare project. Applications must be signed by the representative of the potential workfare sponsor having the authority to commit the political subdivision to the project. The workfare sponsor shall ensure that all necessary agencies, including the welfare agency, which are either involved or have review authority, have concurred in project operation. In addition to the information on project operation required above, the application shall contain the following information:

1. A precise description of the administrative procedures to be used and a work plan which establishes a schedule for development and implementation of the project; and

2. A statement of the qualifications and size of the staff to be used, including a project director, to accomplish the purpose of the project.

G. SELECTION OF PROJECT SITES

1. *Federal procedures.* (a) All applications will be reviewed by a panel comprised equally of representatives from USDA and DOL; and (b) Applications wil be ranked based on the criteria established in (2) below.

2. *Criteria for selection.* (a) Conceptual development and clarity of operational design;

(b) Geographical mix as required by the Food Stamp Act;

(c) Location with a CETA prime sponsor basically fulfilling its public service employment hiring schedule;

(d) Ability of the sponsor to provide a sufficient number and variety of public service jobs to test the feasibility of the workfare concept;

(e) Compliance of the work plan in relation to the provisions for the project as contained within the Act, this Notice, and final regulations;

(f) The adequacy of the work plan; and

(g) The capability of the applicants to conduct the project based on:

(1) A description of the qualifications of staff;

(2) Availability of necessary facilities, staff, and other resources;

(3) Administrative and supervisory capacity; and

(4) Previous experience of the workfare employer in administering public service employment.

3. *Selection.* USDA and DOL will notify all proposers of those sites selected for project operation.

(78 Stat. 703, as amended (7 U.S.C. 2011-2026).)

NOTE.—The Food and Nutrition Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

(Catalog of Federal Domestic Assistance Programs No. 10.551, Food Stamps).

Dated: July 10, 1978.

CAROL TUCKER FOREMEN,
Assistant Secretary.

[FR Doc. 78-19267 Filed 7-12-78; 8:45 am]

[7590-01]

NUCLEAR REGULATORY COMMISSION

[10 CFR Part 110]

EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

Export of Certain Minor Quantities of Nuclear Material; Extension of Comment Period

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Extension of comment period on notice of proposed rulemaking.

SUMMARY: On May 9, 1978, the U.S. Nuclear Regulatory Commission published a notice of proposed rulemaking concerning the export of certain minor quantities of nuclear material which invited interested persons to submit written comments to the Commission by June 23, 1978. This notice extends the comment period to July 22, 1978.

DATES: Comment period expires July 22, 1978.

ADDRESSEES: Interested persons are invited to submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Marvin R. Peterson, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, phone 301-492-8155.

SUPPLEMENTARY INFORMATION: On May 9, 1978, the U.S. Nuclear Regulatory Commission published a notice of proposed rulemaking concerning the export of certain minor quantities of nuclear material, which invited interested persons to submit written comments to the Commission by June 23, 1978. The Petroleum Equipment Suppliers Association has requested an extension of the time for submitting comments because of the complexity of the proposed changes to 10 CFR Part 110. The Commission is hereby extending the time for submitting comments to July 22, 1978.

For the Nuclear Regulatory Commission.

Dated at Washington, D.C., this 10th day of July, 1978.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc. 78-19585 Filed 7-13-78; 8:45 am]

[6320-01]

CIVIL AERONAUTICS BOARD

[SPDR-65; dated: July 7, 1978]

[14 CFR Parts 371, 372a, 373, 378, 378a]

ADVANCE BOOKING CHARTERS; TRAVEL GROUP CHARTERS BY DIRECT AIR CARRIERS AND STUDY GROUP CHARTERERS, INCLUSIVE TOUR CHARTERS; ONE-STOP-INCLUSIVE TOUR CHARTERS

Notice of Proposed Rulemaking to Permit Air Taxi Operators and Commuter Air Carriers to Operate Special Regulation Charters

AGENCY: Civil Aeronautics Board.

ACTION: Proposed rules.

SUMMARY: This notice proposes to include air taxis and commuter air carriers among those carriers eligible to perform special regulation charters. The Board is initiating this action to stimulate competition in the air transportation industy.

DATES: Comments by: September 12, 1978. Reply comments by: September 27, 1978.

Comments and other information received after these dates will be considered by the Board only to the extent practicable.

Requests to be put on the service list by: July 24, 1978. The docket section prepares the service list and sends it to each person listed who then serves his comments on others on the list.

ADDRESSES: Twenty copies of comments should be sent to docket 33001, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in room 711 as soon as they are received.

FOR FURTHER INFORMATION CONTACT:

Patricia T. Szrom, Special Authorities Division, Bureau of Pricing and Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5088.

SUPPLEMENTARY INFORMATION: In keeping with recent Board actions aimed at relaxing existing regulations and encouraging competition within the air travel industry, we propose to allow commuter air carriers and air taxi operators who conduct their operations under part 298 of the economic regulations (14 CFR 298) to provide air transportation under the special regulations.[1] The special regulations, as now written, stipulate that the air transportation for charters under those rules must be performed by direct air carriers which hold certificates of public convenience and necessity under section 401 of the act or foreign carrier permits under section 402 of the act.

Review of the history of the special regulations reveals no reason for prohibiting other classes of Board-authorized carriers, specifically air taxis and commuters, from performing such flights. Rather, it appears that the issue has not been considered. With the steady increase in air taxi and commuter air carrier traffic, these carriers must now be judged a significant part of the air transportation industry,[2] and we see no reason to preclude their participation in the operation of special regulations charters. In addition, now that the minimum group size requirement has been reduced to 20 participants for special regulations charters,[3] the smaller aircraft of these carriers may be more suitable for small scale charters than even the smallest aircraft operated by carriers authorized under sections 401 and 402 of the act. The possibility of using smaller aircraft might also encourage charters between cities not normally used for special regulation charters, as well as for connecting service from small communities to major cities from which other charter service departs.

Ad hoc exemptions. In recent years, we have granted tour operators special authority, through the exemption process, to allow them to use an air taxi or commuter air carrier to accomodate a specific charter program.[4] These exemptions were granted to enable the operators to offer tour opportunities that would not be otherwise available to the public.[5]

While we have routinely granted exemptions of this type,[6] we now feel that requiring tour operators who wish to use air taxis or commuters, to file ad hoc applications for such authority is anticompetitive. Such exemption requests may take months to complete. On the other hand, tour operators using certificated carriers for

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[1] The special regulations include: Part 371, Advance Booking Charters; Part 372a, Travel Group Charters; Part 373, Study Group Charters; Part 378, Inclusive Tour Charters; and Part 378a, One-stop-inclusive Tour Charters. (Note: The Board has recently issued a notice of proposed rulemaking, SPDR-64, which would eliminate Parts 372a, 373, 378, and 378a. Should that rule be made final, all references to those parts in this rulemaking would be deleted.)

[2] Commuter air carrier on-line origin/destination passengers increased 9.6 percent from 6,666,244 to 7,304,996, from 1975 to 1976. During the first 6 months of 1977, commuters carried 4,050,738 on-line origin/destination passengers.

[3] SPR-142. The Board, in SPDR-64, is also proposing complete elimination of the minimum group size requirement. This would further benefit air taxis and commuters since they would be able to carry multiple groups of passengers. In addition, even under our present rules, the 20-seat minimum group size would not apply to aircraft with less than 20 seats. Thus, a contract for the total number of available seats on the aircraft would be considered a planeload charter and not subject to a minimum group-size requirement.

[4] See, e.g., Sun-Time Trips, Inc., order 76-9-6, dated September 1, 1976; and Skyventures, Inc., order 76-3-1, dated March 1, 1976.

[5] Because of the small size of the airports to be used and/or the limited number of passengers to be transported, the small air taxi aircraft provided the only possible means of operating the tours economically.

[6] In granting such exemptions, we required the operators to meet the bonding and operator/participant contract requirements of the special regulations.

special regulation charters may obtain operating authority as soon as 15 days after filing a proper prospectus.[7] Further, the necessity of undergoing the exemption process inhibits air taxi operators and commuter air carriers from soliciting business from tour operators who organize special regulation charters, and conversely, discourages tour operators from planning charters which would require the use of these carriers. Therefore, we have tentatively decided to include air taxis and commuter air carriers among the eligible carriers defined in the special regulations.[8]

Consumer protection provisions. Up to now, we have not required air taxi operators and commuter air carriers to file tariffs, establish escrow arrangements,[9] or provide baggage liability [10] as certificated carriers are required to do. These provisions, which afford protection for charterers and participants, should be considered as possible additional requirements for those air taxis and commuter air carriers who perform special regulation charters. We have tentatively concluded that the charter contracts which must be filed in each charter prospectus will suffice in lieu of tariffs, since charter contracts contain most of the pertinent information, including rates, terms of payment to the carrier, and cancellation provisions which would otherwise be filed in a carrier's tariff. Thus, a tariff would appear unnecessary in this instance.

We are undecided on whether or not to impose the performance bond/escrow account requirements and baggage liability requirements on air taxis and commuters performing these charters. The former provision would protect the payments made by the charterer (or the charterer's escrow) to the carrier, and thus ultimately protect the payments of the participants. The latter would provide participants with a degree of protection against loss, delay, or damage to their baggage. However, imposition of such requirements may be unnecessarily burdensome to these small carriers without compensating benefits, since these requirements are not imposed on their other operations. However, we specifically invite comments on these three consumer protection issues as well as any others which we have not included.

Accordingly, the Board proposes to amend 14 CFR Parts 371, 372a, 373, 378, and 378a as set forth below.

PART 371—ADVANCE BOOKING CHARTERS

1. Section 371.2 would be amended as follows:

§ 371.2 Definitions.

* * * * *

"Direct air carrier" means (1) an air carrier holding a certificate issued under section 401 of the act, or (2) a foreign air carrier holding a permit issued under section 402 of the act, authorizing direct air transportation, or (3) an air taxi operator or commuter air carrier registered under Part 298 of this chapter.

2. Paragraph (e) of § 371.10 would be amended as follows:

§ 371.10 Advance booking charter general requirements.

* * * * *

(e) The air transportation portion of the charter must be performed by direct air carriers.

3. Section 371.11, would be amended as follows:

§ 371.11 Payment to direct air carrier(s).

The direct air carrier(s) shall be paid in full for the cost of the roundtrip charter transportation prior to the scheduled date of flight departure: (See Parts 207, 208, 212, and 214 of this chapter, as the case may be.)

4. Section 371.42 would be amended as follows:

§ 371.42 Tariffs to be on file for charter trips.

No direct air carrier shall perform any charter trips under this part unless it shall have on file with the Board a currently effective tariff showing all rates, fares and charges for such charter trips, and showing the rules, regulations, practices, and services in connection with such transportation, unless the direct air carrier is an air taxi operator or commuter air carrier, in which case, this provision shall not apply.

5. Section 371.43 would be amended as follows:

§ 371.43 Advance booking charters operated by direct air carriers for foreign charter operators.

At least 60 days in advance of the date of departure of a proposed foreign-originating European charter or series of charters, or at least 45-days in advance of the date of departure of all other charters or series of charters, to be operated by a direct air carrier for a foreign charter operator, the carrier shall file with the Board (Special Authorities Division, Bureau of Pricing and Domestic Aviation) a charter prospectus which shall contain the following information:

* * * * *

PART 372a—TRAVEL GROUP CHARTERS

1. Section 372a.2 would be amended as follows:

§ 372a.2 Definitions.

* * * * *

"Direct air carrier" means (1) an air carrier holding a certificate issued under section 401 of the act, or (2) a foreign air carrier which holds a permit issued under section 402 of the act authorizing direct air transportation, or (3) an air taxi operator or commuter air carrier registered under Part 298 of this chapter.

2. Paragraph (e) of section 372a.10, would be amended as follows:

§ 372a.10 Travel group charter general requirements.

* * * * *

(e) The transportation portion of the charter must be performed by direct air carriers.

3. Section 372a.16, would be amended as follows:

§ 372a.16 Payment to direct air carrier(s).

The direct air carrier(s) shall be paid in full for the cost of the round-trip charter transportation before the scheduled date of flight departure. (See Parts 207, 208, 212, and 214 of this chapter, as the case may be.)

4. Section 372a.26 would be amended by adding a new paragraph (b) and redesignating the existing provisions as paragraph (a), as follows:

§ 372a.26 Prohibition on operations unless tariffs are observed.

(a) No charter organizer shall * * *

* * * * *

(b) Where the charter is being operated by an air taxi operator or commuter air carrier, the tariff provisions contained in paragraph (a) of this section shall not apply.

PART 373—STUDY GROUP CHARTERS BY DIRECT AIR CARRIERS AND STUDY GROUP CHARTERERS

1. Section 373.2 would be amended as follows:

§ 373.2 Definitions.

* * * * *

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[7] See sections 371.25(a)(1), 372a.22(a), 373.10(b)(1), 378.10(a), and 378a.25(a)(1).

[8] We would restrict the category of eligible air taxis and commuters to include only those which have registered with the Board in accordance with Part 298, Subpart C; have procured appropriate insurance according to Part 298, Subpart E; and hold a current air taxi/commercial operator certificate under Part 135 of the Federal Aviation Regulations.

[9] See sections 207.17, 208.40, 212.15, and 214.9c.

[10] Certificated carriers are required by section 221.176(a) of the Board's economic regulations to provide baggage liability in the amount of $9.07 per pound for checked baggage and $400 per passenger for unchecked baggage on international flights, and $750 per passenger on domestic flights.

"Direct air carrier" means (1) an air carrier holding a certificate issued under section 401 of the act, or (2) a foreign air carrier holding a permit issued under section 402 of the act authorizing direct air transportation, or (3) an air taxi operator or commuter air carrier registered under Part 298 of this chapter.

2. Section 373.14 would be amended as follows:

§ 373.14 Tariffs to be filed for charter trips

No direct air carrier shall perform any charter trips under this part unless it shall have on file with the Board a currently effective tariff showing all rates, fares, and charges for such charter trips, and showing the rules, regulations, practices, and services in connection with such transportation, unless the direct air carrier is an air taxi or commuter air carrier in which case this provision shall not apply.

PART 378—INCLUSIVE TOUR CHARTERS

1. Paragraph (h) of § 378.2 would be amended as follows:

§ 378.2 Definitions.

* * * * *

(h) "Direct air carrier" means (1) an air carrier holding a certificate issued under section 401 of the act, or (2) a foreign air carrier holding a permit issued under section 402 of the act authorizing direct air transportation, or (3) an air taxi operator or commuter air carrier registered under Part 298 of this chapter.

2. Section 378.15 would be amended as follows:

§ 378.15 Tariffs to be filed for charter trips.

No direct air carrier shall perform any charter trip under this part unless it shall have on file with the Board a currently effective tariff showing all rates, fares, and charges for such charter trips, and showing the rules, regulations, practices, and services in connection with such transportation, unless the direct air carrier is an air taxi or commuter air carrier in which case this provison shall not apply.

3. Paragraphs (a) and (b) of § 378.19 would be amended as follows:

§ 378.19 Inclusive tours operated by direct air carriers for foreign tour operators.

(a) At least 90 days in advance of the date of departure of the proposed tour or series of tours to be operated by a direct air carrier for a foreign tour operator as defined in § 378.2 (d-1)(1), the carrier shall file with the Civil Aeronautics Board (Special Authorities Division, Bureau of Pricing and Domestic Aviation) a tour prospectus which shall contain the following information:

* * * * *

(b) A direct air carrier operating an inclusive tour for a foreign tour operator shall require full payment of the total charter price prior to commencement of the air transportation.

PART 378a ONE-STOP-INCLUSIVE TOUR CHARTERS

1. Section 378a.2 would be amended as follows:

§ 378a.2 Definitions.

* * * * *

"Direct air carrier" means (1) an air carrier holding a certificate issued under section 401 of the act, or (2) a foreign air carrier holding a permit issued under section 402 authorizing direct air transportation, or (3) an air taxi operator or commuter air carrier registered under Part 298 of this chapter.

2. Paragraph (e) of section 378a.10 would be amended as follows:

§ 378a.10 One-stop-inclusive tour charter general requirements.

* * * * *

(e) The air transportation portion of the charter must be performed by direct air carriers.

3. Section 378a.11 would be amended as follows:

§ 378a.11 Payment to direct air carrier(s).

The direct air carrier(s) shall be paid in full for the cost of the round-trip charter transportation prior to the scheduled date of flight departure. (See Parts 207, 208, 212, and 214 of this chapter, as the case may be.)

4. Section 378a.42 would be amended as follows:

§ 378a.42 Tariffs to be on file for charter trips.

No direct air carrier shall perform any charter trips under this part unless such it shall have on file with the Board a currently effective tariff showing all rates, fares, and charges for charter trips, and showing the rules, regulations, practices, and services in connection with such transportation, unless the direct air carrier is an air taxi operator or commuter air carrier, in which case this provision shall not apply.

5. Section 378a.44 would be amended as follows:

§ 378a.44 One-stop-inclusive tour charters operated by direct air carriers for foreign tour operators.

At least 45 days in advance of the date of departure of a proposed foreign-originated OTC or series of OTC's to be operated by a direct air carrier for a foreign tour operator, the carrier shall file with the Board (Special Authorities Division, Bureau of Pricing and Domestic Aviation) a tour prospectus which shall contain the following information:

* * * * *

(Sections 101(3), 204, 402, and 416 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737, 743, 757, 771; 49 U.S.C. 1301, 1324, 1372, 1386.)

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-19497 Filed 7-13-78; 8:45 am]

[6750-01]

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[File No. 762 3047]

S. KLEIN, INC.

Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Provisional consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this provisionally accepted consent agreement, among other things, would require a Washington, D.C., retailer of consumer goods to cease entering into layaway agreements which fail to clearly and conspicuously advise customers of their right to revoke transactions and receive refunds of money paid toward the cost of their purchases. Additionally, the order would require the firm to honor cancellations; furnish credit customers with cost disclosures required by Federal Reserve Systems regulations; and refund to eligible customers all moneys known to have been forfeited under layaway transactions since August 1, 1975.

DATE: Comments must be received on or before September 11, 1978.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Irvin E. Abrams, investigator, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580, 202-724-1129.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal

Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with the provisionally accepted by the Commission, has been placed on the public record, together with material submitted to the Commission that is not exempt from public disclosure under the Freedom of Information Act, for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's rules of practice (16 CFR 4.9(b)(14)).

IN THE MATTER OF S. KLEIN, INC., A CORPORATION

FILE NO. 762 3047, AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST

The Federal Trade Commission having initiated an investigation of certain acts and practices of S. Klein, Inc., a corporation, and it now appearing that said corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between S. Klein, Inc., by its duly authorized officers and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent S. Klein, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1227 F Street NW., Washington, D.C. 20014.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released; and such acceptance may be withdrawn by the Commission if comments of views submitted to the Commission discloses facts or considerations which indicate that the order contained in the agreement is inappropriate, improper, or inadequate.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission, pursuant to the provisions of section 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondent: (1) Issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statutes for other orders. The order shall become final upon service. Mailing of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby, and understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order, and that it may be liable for a civil penalty in the amount provided by law for each violation of the order after it becomes final.

ORDER

For the purpose of this order, the term "layaway" shall mean any transaction whereby the customer agrees to purchase goods or products at the time of the transaction, by means of a downpayment and subsequent payment or payments, with the respondent retaining possession of the goods or products until the agreed payment or payments are completed.

It is ordered, That respondent, S. Klein, Inc., a corporation, its successors, and assigns, and its officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with the advertising, offering for sale, sale, and distribution of women's ready-to-wear clothing and accessories or any other consumer goods or products, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

Entering into any layaway transaction, directly or by implication, either orally or in writing, unless the customer has no contractual obligation to make payments and may, at his or her option, revoke a purchase made under such transaction and receive prompt refund of any amounts paid toward the cash price of the merchandise, less a reasonable service charge not to exceed 10 percent of the cash price, with a maximum of $5 for merchandise costing $90 or less and a maximum of $10 for merchandise costing more than $90; and, the customer receives the following written disclosure, clearly and conspicuously, at the time of the transaction, in not less than 10 point boldface type, of his or her rights and conditions to a prompt refund:

NOTICE OF YOUR RIGHT TO CANCEL

YOU MAY CANCEL THIS TRANSACTION AT ANY TIME AND RECEIVE A PROMPT REFUND OF ALL AMOUNTS PAID BY YOU, LESS A SERVICE CHARGE.

THE SERVICE CHARGE WILL BE NO MORE THAN 10 PERCENT OF THE CASH PRICE WITH A MAXIMUM OF $5.00 FOR MERCHANDISE COSTING $90.00 OR LESS; AND A MAXIMUM OF $10.00 FOR MECHANDISE COSTING MORE THAN $90.00.

IF YOU WANT TO CANCEL THIS TRANSACTION, YOU MUST DO SO IN PERSON AT THE STORE IN WHICH THE MERCHANDISE IS HELD.

It is further ordered, That respondent make prompt refund, of any amount paid toward the cash price of merchandise, to customers who revoke purchases made under layaway transactions as described in the paragraph immediately above.

It is further ordered, That respondent make a cash refund or give a merchandise credit, at the customer's option, of all moneys known to be forfeited, or which should have been known to be forfeited, by its customers under layaway transactions, less a $1.00 service charge, from August 1, 1975, to the date this order becomes final, and in this connection respondent shall:

A. Compile a list of the names and last known addresses of all customers who entered into layaway transactions for the purchase of respondent's goods or products and who have forfeited moneys on said transactions during the period from August 1, 1975, to the date this order becomes final. Said list is to contain the individual amounts of such forfeitures.

B. Send notice letters, which are attached, herein, as appendices A and B, within 1 month of the date this order becomes final, by first-class mail, to each customer referred to in subparagraph A above, advising each customer of his or her right to a refund, the amount of the refund, and his or her option of receiving a cash refund or a merchandise credit; *Provided, however*, That with respect to those customers whose letters are returned to respondent undelivered, respondent shall make a reasonable effort to obtain a current mailing address for each such customer. Respondent's obligation to make refunds under this paragraph of the order shall terminate after its efforts to send notice letters as outlined above have been unsuccessful, but in no event shall such obligations with respect to such customers referred to in subparagraph A above expire prior to 1 year after the date this order becomes final.

C. Make such refunds available immediately upon the receipt of the information set forth in appendix B.

D. Maintain a list which contains the following data: Name and address of each customer who received a refund; the date it was refunded; and the amount of such refund.

It is further ordered, That respondent, S. Klein, Inc., a corporation, its successors, and assigns, and its officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with any extension of consumer credit or any advertisement to aid, promote, or assist, directly or indirectly, any extension of consumer credit, as "consumer credit" and "advertisement" are defined in regulation Z (12 CFR 226) of the Truth in Lending Act (Pub. L. 90-321, 15 U.S.C. 1601 et seq.), do forthwith cease and desist from:

1. Failing to make the consumer credit cost disclosure required by section 226.8 of regulation Z before the transaction is con-

summated, as required by section 226.8(a) of regulation Z.

2. Failing to use the term "cash price", as defined in section 226.2(n) of regulation Z, to describe the purchase price of the goods, as required by section 226.8(c)(1) of regulation Z.

3. Failing to use the term "cash downpayment" to describe the downpayment in money made in connection with the credit sale, as required by section 226.8(c)(2) of regulation Z.

4. Failing to use the term "unpaid balance of cash price" to describe the difference between the cash price and the total downpayment, as required by section 226.8(c)(3) of regulation Z.

5. Failing to use the term "amount financed" to describe the amount of credit of which the customer will have the actual use, as required by section 226.8(c)(7) of regulation Z.

6. Failing to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum as the "deferred payment price", as required by section 226.8(c)(8)(ii) of regulation Z.

7. Failing to disclose the number, amount, due dates or periods of payments scheduled to repay the indebtedness, and the sum of such payments using the term "total of payments", as required by section 226.8(b)(3) of regulation Z.

8. Failing to disclose a description or identification of the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, as required by section 226.8(b)(5) of regulation Z.

9. Failing in any consumer credit transaction or advertisement, to make all disclosures, determined in accordance with sections 226.4 and 226.5 of regulation Z, in the manner, form and amount required by sections 226.6, 226.7, 226.8, and 226.10 of regulation Z.

It is further ordered, That respondent shall forthwith deliver a copy of this order to cease and desist to all present and future personnel of respondent engaged in layaway sales, advertising or consummation of any extension of consumer credit, and that respondent secure a signed statement acknowledging receipt of said order from all such personnel.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That respondent maintain at all times in the future, for a period of not less than three (3) years, complete business records to be furnished upon request to the staff of the Federal Trade Commission, relative to the manner and form of its continuing compliance with all the above terms and provisions of this order.

It is further ordered, That the respondent, herein, shall within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

APPENDIX A

(Date) ————

IMPORTANT NOTICE OF YOUR RIGHT TO A REFUND

Dear Customer:

S. Klein, Inc., has entered into an agreement with the Federal Trade Commission to give you a cash refund or, at your option, a merchandise credit for moneys forfeited by you as the result of your layaway transaction with us. All such refunds, however, are subject to a $1 service charge.

Our store records indicate that your refund amounts to ————. Any inquiries regarding this refund should be directed to S. Klein, Inc. at (telephone number) ————.

In order to obtain this refund, please bring the enclosed form, in person, to our store located at 1227 F Street NW., Washington, D.C.

Sincerely,

S. KLEIN, INC.

APPENDIX B

NOTICE OF ACCEPTANCE OF REFUND

I hereby accept the refund offered by S. Klein, Inc., and I have checked below the way that I wish to receive it.

1. ( ) Cash Refund.
2. ( ) Merchandise Credit.

Name (Please Print)————
(Number and Street) ————
(City and State)————
(Customer's Signature) ————
(Date) ————

NOTE.—Bring this Notice to S. Klein, Inc. in person for a refund.

S. KLEIN, INC.

File No. 762 3047

ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement to a proposed consent order from S. Klein, Inc., a corporation, with its principal place of business located at 1227 F Street NW., Washington, D.C. 20014.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the consent order and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The proposed complaint alleges that proposed respondent is now and has been engaged in the offering for sale, sale and distribution of women's ready-to-wear clothing and accessories and other consumer goods and products to the general public at retail.

The proposed complaint further alleges that proposed respondent's layaway contracts unfairly provide for the forfeit by layaway customers of all previously made payments and claims on merchandise laid away in the event of default in the payment of the layaway contract. The proposed complaint alleges that this contract provision is adhesive and to the disadvantage of proposed respondent's customers as it is not offset by any reasonable value received by these customers. This provision, the proposed complaint alleges, is unfair and therefore is in violation of the Federal Trade Commission Act.

The proposed complaint further alleges that proposed respondent's layaway transactions are credit sales covered by the Truth in Lending Act. The proposed complaint alleges in these transactions proposed respondent failed to make credit cost disclosures as required by regulation Z, the implementing regulation of the Truth in Lending Act.

The agreement to a proposed consent order in this matter requires proposed respondent to discontinue the said layaway provision alleged to be unfair and to make refunds to all layaway customers who were in default from August 1, 1975, to the date this order becomes final. The consent order further provides that credit customers or proposed respondent will be given required credit cost disclosures.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way the terms of the proposed order.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-19426 Filed 7-13-78; 8:45 am]

[4110-03]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Parts 155 and 156]

[Docket No. 77P-0090]

TOMATO JUICE, TOMATO CONCENTRATES, AND CATSUP

Amendment to Standards; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The comment period for the proposed amendments to standards of identity for tomato juice, tomato concentrates, and catsup is extended, based on a request for extension, to provide additional time for submitting comments.

DATE: Comments by October 10, 1978.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Benjamin M. Gutterman, Bureau of

Foods (HFF-402), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-245-1231.

SUPPLEMENTARY INFORMATION: The Commissioner of Food and Drugs issued a proposed rule in the FEDERAL REGISTER of May 9, 1978 (43 FR 19864) that would amend the standard of identity for tomato juice, tomato concentrates, and catsup. Interested persons were invited to submit comments on the proposed rule by July 10, 1978.

The Commissioner has received a written request for extension of the comment period (on file with the Hearing Clerk, Food and Drug Administration) from the National Food Processors Association (NFPA). The request asserts that the numerous proposed changes in optional ingredients and related labeling requirements demand careful evaluation and requested additional time to conduct tests and compile data with respect to the impact of new analytical methods specified in the proposed standards of quality. The request further pointed out that the time needed to develop comments is unavoidably lengthened because most NFPA members are in the midst of their packing season.

Good reason therefor appearing, the Commissioner extends the comment period in this matter to October 10, 1978.

Interested persons may, on or before October 10, 1978, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the hearing clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 10, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs

[FR Doc. 78-19419 Filed 7-13-78; 8:45 am]

[4110-03]

[21 CFR PARTS 182, 186]

[Docket No. 78N-0152]

HYDROGENATED FISH OIL

Affirmation of GRAS Status as an Indirect Human Food Ingredient

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This is a proposal to affirm the generally recognized as safe (GRAS) status of hydrogenated fish oil as an indirect human food ingredient. The safety of this ingredient has been evaluated under a comprehensive safety review being conducted by the agency. This proposed rule would list this ingredient as an indirect food substance affirmed as GRAS.

DATE: Comments by September 12, 1978.

ADDRESS: Written comments to the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Corbin I. Miles, Bureau of Foods (HFF-335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-472-4750.

SUPPLEMENTARY INFORMATION: The Commissioner of Food and Drugs has initiated a comprehensive safety review of human food ingredients classified as GRAS or subject to a prior sanction (see the FEDERAL REGISTER of July 26, 1973 (38 FR 20040)). Under this review, the Food and Drug Administration (FDA) has evaluated the safety of hydrogenated fish oil. In accordance with the provisions of § 170.35 (21 CFR 170.35), the Commissioner proposes to affirm the GRAS status of this ingredient.

Commercial fish oil is defined as the oil expressed primarily from menhaden, and secondarily from herring and tuna. Fish oils are abundant in triglycerides with long-chain polyunsaturated fatty acids containing more than 18 carbon atoms in the chain and with 4 or more double bonds. Essential fatty acids constitute about 2 percent of fish oil. Other components of fish oil include trace amounts of volatile, short-chain fatty acids, phospholipids, hydrocarbons, vitamins A and D, wax esters, and sterols, such as cholesterol.

Ths fish oil for food use is hydrogenated to the degree necessary to produce a stable, palatable product of suitable plasticity. Hydrogenation makes the product suitable for human consumption, although direct food use is not allowed in the United States. The hardening of these oils by hydrogenation results from saturation of double bonds and *cis-trans* isomerization. The relative amounts of these alterations and their control are patented by manufacturers to guard the individuality of their branded products. Thus, hydrogenated fish oils include a wide range of chemically and sterically different products that vary according to source of the oil and subsequent treatment.

Hydrogenated fish oil is listed in § 182.70 (21 CFR 182.70) as GRAS for use as a component of cotton and cotton fabrics used in dry food packaging. It is also listed in § 176.170 (21 CFR 176.170) as a component of paper and paperboard in contact with aqueous and fatty foods and in § 177.2800 (21 CFR 177.2800) as a component of textile and textile fibers. The potassium salt of hydrogenated fish oil fatty acids is listed in § 176.170 as a component of paper and paperboard in contact with aqueous and fatty foods and in § 176.180 (21 CFR 176.180) as a component of paper and paperboard in contact with dry food. Hydrogenated fish oils are neighter used nor approved for direct food use in the United States. This proposal therefore deals only with the small amounts of hydrogenated fish oil that might enter foods from packages as a result of abrasion or migration from the container during marketing, storage, and use.

Hydrogenated fish oil has been the subject of a search of scientific literature from 1920 to the present. The criteria used in the search were chosen to discover any articles that considered (1) chemical toxicity, (2) occupational hazards, (3) metabolism, (4) reaction products, (5) degradation products, (6) any reported carcinogencity, teratogenicity, or mutagenicity, (7) dose response, (8) reproductive effects, (9) histology, (10) embryology, (11) behavioral effects, (12) detection, and (13) processing. A total of 957 abstracts on fish oil and hydrogenated fish oil was reviewed and 100 particularly pertinent reports from the literature survey have been summarized in a scientific literature review.

The scientific literature review shows, among other studies, the following information as summarized in the report of the Select Committee on GRAS Substances (the select committee), selected by the Life Sciences Research Office of the Federation of American Societies for Experimental Biology:

Pathways of absorption and distribution of hydrogenated fish oil are similar to those of other dietary fats. In general, the saturated glycerides are less utilized than the unsaturated glycerides. For example, McCay and Paul found that guinea pigs utilized about 60 percent of hydrogenated vegetable oil (a commercial shortening), compared with 90 percent of several unhydrogenated oils including salmon oil. In a study of the distribution of fatty acids in the body milk fat of rats fed a variety of oils, including partly hydrogenated herring oil, Beare found that changes in dietary fat were followed by corresponding changes in tissue distribution of long chain fatty acids. Using rats fed ethyl linoleate, ethyl arachidonate, or ethyl linolenate in several proportions, Mohrhauer and Holman concluded that the fatty acid composition of liver fat corresponded well with the diet. Approximately the same results were reported by Neudoerffer and Lea in studies with turkeys fed a basal diet supplemented with 2.5 percent beef fat or anchovy oil, or 5 percent anchovy oil (about 6.8 g per kg per day).

In a study of 210 samples of depot fat removed during surgery from the abdominal or thoracic walls of human patients, Imaichi et al. found that the patients known to be unusually high consumers of fish oil had depot fat containing approximately double the levels of highly unsaturated fatty acids found in the average of the other samples.

The importance of the linolenate: linoleate ratio in the diet has been reported in several papers. Holman reported that when the dietary intake of linolenate is relatively high in relation to linoleate, the production of the higher metabolites of linoleate is inhibited and linoleate itself accumulates. It should be noted that in such studies, refined oils derived from unhydrogenated fish oil were fed to animals generally as the sole dietary lipids. The findings are not necessarily illustrative of the health significance of modest amounts of hydrogenated fish oil in typical human diets.

Much attention has been given to the concept that the concentration of cholesterol and triglycerides in the blood is affected by the ploynsaturated fatty acid: saturated fatty acid ratio in the diet. Owing to the relatively high levels of polyunsaturated fatty acids in fish oil, these products have been studied along with various vegetable oils and fats from animals. In a study by Peifer et al. which is generally illustrative of the findings, rats were fed diets in which one-third of the fat was tallow. During a 5-week period there was no substantial change in the level of serum cholesterol in the animals given palmitate and oleate. In all others the level became progressively lower. However, the decrease was clearly greater in the rats given linolenate or the fish oil. This effect has been reviewed in a paper by Stansby, in which he has called attention to the uniquely high content of docosahexanoic acid in fish oil.

The majority of the short-term feeding experiments available to the select committee has been concerned with non-hydrogenated fish oil. In general, any damaging effects in the animals have centered on products of oxidation and deficiencies of vitamin E; but the oil used in such studies seemed to be below the quality standards for edible hydrogenated fish oil.

According to Matsuo, acute toxic effects in animals fed on fish oil do not occur unless degradation products are present. Rats fed diets containing 5 percent of ethyl esters (about 5 g per kg) of highly unsaturated fatty acids from cuttlefish oil thrived, but the oxidized forms of the esters were toxic. In further work he noted that the degree of toxicity was directly proportional to the content of peroxide which could be formed by autoxidation of the oil.

In rabbits, marked damage to the mucous membranes of the stomach and intestines, and marked liver damage resulted from the oral administration of 0.8 ml per day for 1 to 2 weeks of the autoxidized esters (0.5 g per kg). Topical application of these or non-oxidized esters to the skin of rats had similar effects. In other studies, rats were similarly affected by peroxides formed in cod liver oil by autoxidation. Further work in the same laboratory resulted in the formation and purification of a cyclic monomer which was found to be rapidly fatal (about 10 days) to rats when fed as 20 percent (about 20 g per kg per day) of a basal diet. This monomer was identified as the toxic end product of autoxidation and peroxidation of fish and other oils.

Rasheed and others noted that rats grew well on a diet supplemented with 10 percent of pure triglycerides from fresh menhaden oil. When the triglycerides were oxidized experimentally at various levels to peroxide values of 125–310, this diet caused steatitis (yellow fat disease), enlarged livers, and high malonaldehyde levels in blood and excreta. When the fresh menhaden oil was allowed to autoxidize for 24 hours and then was fed as 15 percent (about 12 g per kg per day) of the diet, it produced anorexia, steatitis, low hemoglobin levels, and death, depending on the degree of autoxidation. The symptoms were largely reversed when rats, fed oil autoxidized to a peroxide value of 60, were treated subsequently with ethoxyquin or *alpha*-tocopherol. The harmful effects of ingesting autoxidized fish and other oils have been reviewed by Stansby.

In a study of partially hydrogenated herring oil as the sole dietary fat, Aaes-Jorgensen found the growth rate of weanling rats fed 28 percent (about 22 g per kg per day) to be significantly less than those fed at a level of 7 percent (about 6 g per kg per day). Moreover, growth rate of rats receiving 7 percent hydrogenated herring oil was significantly poorer than rats receiving 7 or 28 percent of unhydrogenated herring oil. After 14 weeks the animals receiving 28 percent of the partially hydrogenated herring oil were moribund. Dermal symptoms, indicating essential fatty acid deficiency, were pronounced in all the rats receiving either 7 percent or 28 percent partially hydrogenated herring oil. Although the analytical methods were poorly developed at the time of this work, it is apparent that the concentration of normal as well as conjugated polyenoic acid was low.

In another laboratory, Beare fed weanling rats diets containing 2 percent partially hydrogenated herring oil for 6 weeks (about 4 g per kg per day). The analytical data showed that the oil had a low content of linoleic acid, and an appreciable content of odd-numbered fatty acids and several C_{20} acids. Experimental rats ate more food and gained more weight than did comparable rats fed similar amounts of corn oil, rapeseed oil, or margarine (containing some marine oil). On the basis of extensive studies, Beare concluded, "The nutritive effects of partially hydrogenated fish oil are only vaguely known and present a most difficult area to explore because of the complexity of the unsaturated fatty acid pattern of such oils."

The generally observed dietary limitations of various fish oils, even without partial hydrogenation, were indirectly confirmed by Ershof in experiments involving the feeding of weanling rats on a purified low-fat diet supplemented with 10 percent of such fish oils as crude or refined tuna oil, crude sardine oil, menhaden oil, or cod liver oil (about 10 g per kg per day). Within the first week there was substantial retardation in growth, accompanied by diarrhea. These effects were largely counteracted by the concurrent feeding of cottonseed oil at a 10 percent level in the diet. Other oils had similar counteracting effects; they included soybean oil, sesame oil, corn oil, and wheat germ oil. It was concluded that the deficiencies in the fish oils were due largely, if not entirely, to the lack of sufficient antioxidants including vitamin E. This was confirmed in experiments by Gershoff and Norkin involving the use of 3- to 6-month-old cats fed purified diets containing vitamin E with and without tuna oil. The basal diet contained 20 percent of vitamin E-free lard. In the cats fed 5 percent of crude tuna oil (about 3.5 g per kg per day) and 17 IU of vitamin E per kg of diet there was no growth, and the animals were moribund after 2 months. Cats given the same amount of tuna oil and 425 IU of vitamin E per kg of diet grew normally and showed no signs of abnormalities when sacrificed after 10 months.

Various reports in the literature on the effectiveness of fish oil in satisfying the nutritional requirements for essential fatty acids have clearly shown differences from the common vegetable oils because fish oil is not of the linoleic acid type. In feeding experiments with weanling rats, Privett et al. found that the usual dermal symptoms of essential fatty acid deficiency were not alleviated by the C_{16}–C_{22} fractions of the polyunsaturated fatty acids of unhydrogenated tuna oil given at a rate of 100 mg per rat per day (about 1 g per kg per day). However, all the fractions except the 16-carbon fraction showed marked stimulation of growth, suggesting the presence of considerable amounts of linolenic acid or related polyunsaturated fatty acids. In another significant study with weanling rats, Privett et al. showed that unhydrogenated tuna, herring, and menhaden oils contain small amounts of linoleate-type acids and that essential fatty acid deficiency does not develop if the rats were fed fish oil at the 10 percent level.

No relevant long-term studies of the effects of feeding hydrogenated fish oil have come to the attention of the select committee.

Some data have been published by Stout and associates on pesticide residues that appear in sea fish. In some areas such fish contain unacceptable levels of DDT and related pesticides. These accumulations were attributed to agricultural run-off. It was found that all detectable amounts of *p,p'*-DDT in fish oils could be removed by refining, and 90 percent could be removed by hydrogenation. Thus the customary manufacturing processes would normally eliminate all detectable *p,p'*-DDT. However, *p,p'*-DDE, the undetectable part, was not fully eliminated by these procedures. These studies confirmed earlier work by Smith et al. on the removal of DDT, DDE, endrin, dieldrin, heptachlor, and heptachlor epoxide from vegetable oils by hydrogenation.

Stansby in a comprehensive review of pertinent literature in 1969 concluded that "under normal conditions there is no possibility that accumulation of oxidation products of harmful effect from fish oils can be a cause for concern in either human or animal food."

The Select Committee has no information on possible carcinogenic, mutagenic, or teratogenic effects of hydrogenated fish oils.

All of the available safety information on hydrogenated fish oil has been carefully evaluated by qualified scientists of the Select Committee. It is the opinion of the Select Committee that:

On the basis of the evidence reviewed, the amount of hydrogenated fish oil migrating to food from cotton and cotton fabrics used in dry food packaging, or from paper and paperboard packaging used with dry, aqueous, and fatty food, is not great enough to be harmful to humans. Even a moderate amount of partially hydrogenated fish oil in the diet would have no adverse health effects if adequate sources of essential fatty acids and vitamin E were present and the manufacturing and handling practices were satisfactory.

The Select Committee concludes that there is no evidence in the available information on hydrogenated fish oil that demonstrates or suggests reasonable grounds to suspect a hazard to the public when the substance is used in food packaging as now practiced or as it might be expected to be used for such purposes in the future. Based upon his own evaluation of all available information on hydrogenated fish oil, the Commissioner concurs with this conclusion. The Commissioner therefore concludes that no change in the GRAS status of hydrogenated fish oil is justified.

Copies of the scientific literature review and the report of this Select Committee are available for review at the office of the Hearing Clerk, Food and Drug Administration, room 4-65, 5600 Fishers Lane, Rockville, Md. 20857 and may be purchased from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Va. 22161, as follows:

Title	Order No.	Price code	Price [1]
Fish oils (scientific literature review).	PB-228-555/AS	A 05	$6.00
Hydrogenated fish oil (select committee report).	PB-262-667/AS	A 02	$4.00

[1] Price subject to change.

This proposed action does not affect the present use of hydrogenated fish oil for pet food or animal feed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409(d), 701(a), 52 Stat. 1055, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348(d), 371(a))) and under authority delegated to him (21 CFR 5.1), the commissioner proposes that Parts 182 and 186 be amended as follows:

§ 182.70 [Amended]

1. In Part 182, by amending § 182.70 *Substances migrating from cotton and cotton fabrics used in dry food packaging* by deleting the listing entry for "fish oil (hydrogenated)".

2. In Part 186, by adding new § 186.1551 to read as follows:

§ 186.1551 Hydrogenated fish oil.

(a) Hydrogenated fish oil (CAS Reg. No. 8016-14-6) is a class of oils produced by partial hydrogenation of oils expressed from fish, primarily menhaden and secondarily herring or tuna. Hydrogenation of fish oils use catalysts composed of either elemental nickel, elemental copper, or a mixture of these elements. The crude hydrogenated fish oil is further processed by alkali refining, bleaching, and deodorization by steam stripping.

(b) Hydrogenation of fish oils results in a final product with a melting point greater than 32° C as determined by Section Cc 1-25, Official and Tentative Methods of the American Oil Chemists' Society method (1964)[1] or equivalent. The product has an approximate fatty acid composition of 30 to 45 percent saturated fatty acids, 40 to 55 percent monoenoic fatty acids, 7 to 15 percent dienoic fatty acids, 3 to 10 percent trienoic fatty acids, and less than 2 percent tetranoic or higher polyenoic fatty acids. The approximate percentages of total fatty acids by carbon chain length are 15 to 30 percent each of C_{16}, C_{18}, C_{20}, C_{22}, less that 10 percent C_{14}, or lower carbon chain length, and less than 1 percent C_{24} or higher carbon chain length fatty acids.

(c) The ingredient is used or intended for use as a constituent of cotton and cotton fabrics used in dry food packing.

(d) The ingredient migrates to the packaged or wrapped food at levels not to exceed good manufacturing practices.

The Commissioner hereby gives notices that he is unaware of any prior sanction for the use of these ingredients in food under conditions different from those proposed herein. Any person who intends to assert or rely on such a sanction shall submit proof of its existence in response to the proposal. The regulations proposed above will constitute a determination that excluded uses would result in adulteration of the food in violation of section 402 of the act (21 U.S.C. 342), and the failure of any person to come forward with proof of such an applicable prior sanction in response to this proposal constitutes a waiver of the right to assert or rely on such sanction at any later time. This notice also constitutes a proposal to establish a regulation under Part 181 (21 CFR Part 181), incorporating the same provisions, in the event that such a regulation is determined to be appropriate as a result of submission of proof of such an applicable prior sanction in response to this proposal.

Interested persons may, on or before September 12, 1978, submit to the Hearing Clerk (HFC-20), Food and Drug Administration, room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

[1] Copies may be obtained from: American Oil Chemists' Society, 35 East Wacker Drive, Chicago, Ill. 60601.

NOTE.—The Food and Drug Administration has determined that this proposal will not have a major economic impact as defined by Executive Order 11821 (amended by Executive Order 11949) and OMB Circular A-107.

Dated: July 10, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-19420 Filed 7-13-78; 8:45 am]

[1505-01]

[21 CFR Parts 436, 469]

[Docket No. 77N-0069]

GRISEOFULVIN GAS LIQUID CHROMATOGRAPHY

Method for Griseofulvin Content

Correction

In FR Doc. 78-14452, appearing at page 22730 in the issue for Friday, May 26, 1978; make the following corrections:

1. On page 22730, first column, fourth line of the SUMMARY, "griefulvin" should read "griseofulvin".

2. On page 22731, third column, twelfth line of § 449.120b(b)(1)(i), insert "are" after "there"; first line of § 449.120b(b)(1)(ii), "grieo[fulvin]" should read "griseo[fulvin]".

3. On page 22731, the remainder of the explanations for the formula under § 449.120b(b)(1)(ii) are found at the top of page 22732.

[4110-03]

[21 CFR Part 680]

[Docket No. 78N-0172]

ALLERGENIC PRODUCTS

Proposed Limit of Maximum Volume in Multiple Dose Containers

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This is a proposal to amend the biologics regulations to limit the permitted maximum volume contained in multiple dose containers to 30 milliliters thereby reducing the potential danger of contamination of allergenic products by limiting the available number of injectable doses in the container. The proposal would make the requirements for manufacturers of allergenic products consistent with the U.S. Pharmacopeia ("U.S.P.") regarding maximum volume

of product for multiple dose containers.

DATES: Comments by September 12, 1978.

ADDRESS: Written comments to the Hearing Clerk HFC-20), Food and Drug Administration, room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Al Rothschild, Bureau of Biologics (HFB-620), Food and Drug Administration, Department of Health, Education, and Welfare, 8800 Rockville Pike, Bethesda, Md. 20014, 301-443-1306.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration is conducting a continuing review of the regulations governing biological products to insure that the criteria of safety, purity, potency, and effectiveness established by the regulations are consistent with the judgment of the scientific community. The Commissioner of Food and Drugs notes that the biological regulations are not consistent with the "U.S.P." with respect to the maximum volume of product for multiple dose containers. A multiple dose container is a container with a volume of product intended for more than one injection. "U.S.P." XIX provides that multiple dose containers should not contain "a volume of injection more than sufficient to permit the withdrawal of 30 ml." Presently, there is no such requirement in the biologics regulations. Licensed injectable allergenic products are the only biological products which are marketed in multiple dose containers with more than 30 ml of product.

Whenever a closed container is entered, there is a chance of introducing, and contaminating the product with environmental contaminants (microorganisms, foreign material, etc.) which may adversely affect the safety and effectiveness of the product. Because the volume in a multiple dose container is intended for more than one injection, special precautions must be taken each time the container is entered to preclude the introduction of environmental contaminants. Obviously, the more often the container is entered, the greater the risks. A limitation on product volume will therefore reduce the possibility of contamination.

Accordingly, the Commissioner proposes to amend the biologics regulations to require that a multiple dose container for an allergenic product shall contain no more than a volume sufficient to permit the withdrawal of 30 ml.

The Commissioner has carefully considered the environmental effects of the proposed regulations and, because the proposed action will not significantly affect the quality of the human environment, has concluded that an environmental impact statement is not required. A copy of the environmental impact assessment is on file in the office of the Hearing Clerk.

Therefore, under the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner (21 CFR 5.1), it is proposed that Part 680 be amended in § 680.2, by adding new paragraph (e) to read as follows:

§ 680.2 Manufacture of allergenic products.

* * * * *

(e) *Multiple dose containers.* A multiple dose container shall contain a volume of product no more than sufficient to permit the withdrawal of 30 milliliters.

* * * * *

Interested persons may, on or before September 12, 1978, submit to the Hearing Clerk (HFC-20), Food and Drug Administration, room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

NOTE.—The Food and Drug Administration has determined that this proposal will not have a major economic impact as defined by Executive Order 11821 (amended by Executive Order 11949) and OMB Circular A-107. A copy of the economic impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

Dated: July 6, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-19138 Filed 7-13-78; 8:45 am]

[4110-03]

[21 CFR Part 1020]

[Docket No. 75N-0071]

DIAGNOSTIC X-RAY SYSTEMS AND THEIR MAJOR COMPONENTS

Amendments to Performance Standard

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This is a proposal to amend the performance standard for diagnostic X-ray systems and their major components to: revise the statement of applicability with respect to cassette holders and add a definition for "cassette holder"; revise the definition for "leakage technique factors" and the conditions for measuring the leakage radiation from the diagnostic source assembly; clarify the requirements for spot-film X-ray field limitation; and require that certain types of fluoroscopic X-ray systems be provided with the means for stepless adjustment of the X-ray field size.

DATE: Comments by September 12, 1978.

ADDRESS: Written comments to the Hearing Clerk (HFC-20), Food and Drug Administration, room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

John C. Taschner, Bureau of Radiological Health (HFX-460), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-1960.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of June 11, 1975 (40 FR 24909), the Commissioner of Food and Drugs issued several proposed amendments to the diagnostic X-ray systems performance standard. As a result of comments received, proposed amendments concerning spot-film X-ray field limitation and stepless adjustment of the X-ray field size on image-intensified fluoroscopic systems were withdrawn from the final rule published in the FEDERAL REGISTER of February 25, 1977 (42 FR 10983), so that further evaluation of these proposals would not delay promulgation of the remaining amendments. In addition, one comment recommended that definitions be included in § 1020.30(b) (21 CFR 1020.30(b)) for "cassette holder" and "cassette tray" because these terms have been used frequently in implementing the standard without the terms being defined. Also, two comments expressed concern over the definition of "leakage technique factors" as it relates to beam-limiting devices used in mammography.

Based on these comments and further evaluations by the Bureau of Radiological Health (BRH), the Commissioner now proposes the following specific amendments:

1. The unqualified phrase "cassette holders" would be deleted from § 1020.30(a)(1)(i) (21 CFR 1020.30(a)(1)(i)). In its stead, the Commissioner proposes to substitute the phrase "vertical cassette holders mounted in a fixed location and cassette holders with front panels." This proposed revision is consistent with FDA policy that only these cassette holders require certification and that cassette trays mounted under station-

ary radiographic-fluoroscopic tables do not require certification. For clarification, "cassette holder" would be defined in new § 1020.30(b)(57). A separate definition for "cassette tray" is unnecessary because the Commissioner considers cassette trays to be one type of cassette holder.

2. The Commissioner proposes to revise the definition of "leakage technique factors" in § 1020.30(b)(21) to specify factors associated with the diagnostic source assembly rather than the X-ray tube housing assembly. He also proposes to amend § 1020.30(k) to require positive means to limit the technique factors such that the leakage technique factors are not exceeded if the maximum rated peak tube potential of the tube housing assembly is greater than the maximum rated peak tube potential for the diagnostic source assembly.

The current leakage radiation requirement in § 1020.30(k) applies to the diagnostic source assembly, defined in § 1020.30(b)(11) as the tube housing assembly with a beam-limiting device attached. But a rigorous interpretation of the standard has led to the interpretation that the leakage radiation limit should be met wih the X-ray tube operated at its leakage technique factors, defined in terms of the tube housing assembly and specifically in terms of the maximum rated peak tube potential. Thus, a beam-limiting device not rated for the maximum peak tube potential for the tube housing assembly could not be used with that tube-housing assembly even though it may never be operated above the rating of the beam-limiting device. The BRH published policy, however, has been to test for leakage radiation at the maximum potential of the compatible X-ray control and generator. Thus, a beam-limiting device used for mammography and rated for low kilovoltage, for example, may be listed by the manufacturer as being compatible with an X-ray tube rated at 150 kilovolts peak (kVp), provided it is installed with a control interlocked so as to prevent X-ray production above the peak tube potential for which the beam-limiting device was rated. The proposed revision of § 1020.30(b)(21) would make the standard consistent with this BRH policy.

The proposal to amend § 1020.30(k) to require that positive means be provided to limit the technique factors when the maximum-rated peak tube potential for the diagnostic source assembly is less than the rated peak tube potential of the tube-housing assembly is necessary to insure that excessive leakage radiation does not result from exceeding the leakage technique factors for the diagnostic source assembly.

The proposed revisions of § 1020.30(b)(21) and § 1020.30(k) would necessitate the following additional changes in the provisions of the standard:

Section 1020.30(h)(2) would be revised to require each tube-housing manufacturer to state the leakage technique factors for each combination of tube housing assembly and beam-limiting device which the manufacturer states as being compatible. Likewise, § 1020.30(h)(4) would be revised to require each beam-limiting device manufacturer to state each combination of beam-limiting device and tube housing assembly which the manufacturer specifies as being compatible. In addition, the current provision in § 1020.30(h)(4)(i) would be deleted, as this requirement is already contained in § 1020.30(g).

3. Section 1020.31(g)(1) (21 CFR 1020.31(g)(1)), concerning X-ray field limitation on systems equipped with spot-film devices, would be revised to remove an ambiguity.

Section 1020.31(g)(1) currently requires that means be provided between the X-ray source and the patient for adjustment of the X-ray field size to the size of that portion of the film which has been selected on the spot-film selector, and that the adjustment shall be automatic except when the X-ray field size in the plane of the film is smaller than that of the selected portion of the film. But the provision does not specify the general characteristics of the means to be provided for adjustment of the X-ray field size when it is smaller than that of the selected portion of the film. The Commissioner proposes to remove this ambiguity by adding a statement to § 1020.31(g)(1), that when the X-ray field size is less than the size of the selected portion of the film, adjustment of the field size shall be accomplished only at the operator's option. The Commissioner intends that adjustment of the X-ray field for spot films always be automatic if the fluoroscopic shutter settings are such that the X-ray field would be larger than the selected spot film format. If the fluoroscopic shutter settings produce an X-ray field smaller than the selected spot film format, then further adjustment of the shutters should only be accomplished at the option of the operator. A system would be permitted that provides a choice of two modes of operation, such that in one mode the beam-limiting device would adjust automatically to the selected spot-film size; while in the other mode, the beam-limiting device would not automatically adjust to the selected spot-film size when the size of the X-ray field at the film is smaller than the selected spot-film size.

4. Section 1020.32(b)(2)(iv) (21 CFR 1020.32(b)(2)(iv)) concerning image-intensified fluoroscopic systems would be revised to require that the systems with variable source-image receptor distance (SID) and/or with an image intensifier having a maximum visible area greater than 300 square centimeter (cm^2) be provided with means for stepless adjustment of the X-ray field size. Equipment with a fixed SID and a maximum visible area of 300 cm^2 may be provided with either stepless adjustment of the X-ray field or other means, such as a sliding aperture plate, to limit further the X-ray field to 125 cm^2 or less at the plane of the image receptor. In addition, the requirement for a minimum field size equal to or less than 5 by 5 cm would be deleted for systems without stepless adjustment.

Many comments objected to the June 11, 1975 proposed amendment to § 1020.32(b), requiring that all fluoroscopic X-ray systems be provided with the means for stepless adjustment of the X-ray field size. Several comments stated that while they had no objection to its application to stationary general-purpose fluoroscopic systems, they were concerned that the addition of stepless beam-limiting devices to mobile and some special purpose image-intensified fluoroscopes, which operate at a fixed SID, would interfere with their intended use. The comments stated that such systems are frequently used in operating rooms during orthopedic, neurologic, and cardiac surgery procedures, and they must be light and compact for rapid positioning over a wide range of angles. They expressed their concern that the addition of stepless beam-limiting devices would add weight and complexity to such systems, interfere with positioning, and make them more difficult to use. Some comments expressed doubt that significant radiation protection would be gained because mobile fluoroscopic systems are usually fitted with 6- or 7-inch image intensifiers, and further reduction of the field size is not desired during most diagnostic procedures.

A review of manufacturers' initial reports confirmed the comments that mobile and stationary "C-arm" type of fluoroscopes, which operate at a fixed SID, are fitted with 6- or 7-inch image intensifiers, the largest having an input phosphor area of approximately 230 cm^2. By contrast, stationary general purpose fluoroscopic systems are equipped with 9-inch or larger image intensifiers, and the SID is variable. The smallest image intensifier in the 9-inch class is a 22-cm tube with an input phosphor area of 380 cm^2. Thus, a maximum visible area of 300 cm^2 provides a logical breakpoint for the stepless field limitation requirement. This is consistent with the comments received and with the International Electrotechnical Commission's Standard Publication 407, which requires continuously adjustable collimation

where the image receptor area of the image intensifier exceeds 300 cm^2.

Section 1020.32(b)(2)(iv) currently requires, in part, that the minimum field size at the greatest SID shall be equal to or less than 5-by-5 cm. The proposed amendment would eliminate this requirement for image-intensified fluoroscopic systems equipped with stepped field limitation, but would require that these systems be provided with the means to limit further the X-ray field to an area of 125 cm^2 or less. The 5-by-5 cm minimum field-size requirement is being deleted for stepped beam-limiting devices because the requirement was originally intended to apply only for stepless beam limitation and has no clinical utility for fluoroscopic systems fitted with stepped beam-limiting devices. Because of the limited space available for stepped apertures in this type of beam-limiting device, such a requirement could preclude the use of another, more useful aperture.

The proposal that means be provided to permit further limitation of the fluoroscopic X-ray field to 125 cm^2 or less is necessary for systems fitted with stepped beam-limiting devices to allow the operator to reduce the beam size and thereby reduce patient exposure in situations where the use of full field is not clinically necessary. The basis for the 125 cm^2 value is that it is the minimum field size considered by the BRH to be clinically usable.

Proposed Effective Date

It is proposed that these amendments become effective on the date of publication of the final regulation in the Federal Register. This early effective date is considered feasible because the new provisions contained in the regulation are for the purpose of clarification and are consistent with interpretations that have been issued previously by the agency. Because the proposed amendment in § 1020.32(b)(2)(iv) (21 CFR 1020.32(b)(2)(iv)) would not require the modification of designs or quality control or the submission of additional reports, it is proposed that this amendment also become effective on the date of publication of a final regulation in the Federal Register.

The Commissioner has carefully considered the environmental effects of the proposed regulation and, because the proposed action will not significantly affect the quality of the human environment, has concluded that an environmental impact statement is not required. A copy of the environmental impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

Therefore, under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177-1179 (42 U.S.C. 263f)) and under authority delegated to him (21 CFR 5.1), the Commissioner proposes that Part 1020 be amended as follows:

1. In § 1020.30 by revising paragraph (a)(1)(i); by amending paragraph (b)(21) by deleting "tube housing" and inserting in its place "diagnostic source" in the four places it appears within the paragraph; by adding new paragraph (b)(57); and by revising paragraphs (h)(2)(i), (h)(4) introductory text and (h)(4)(i) and (k) to read as follows:

§ 1020.30 Diagnostic X-ray systems and their major components.

(a) * * *

(1) * * *

(i) Tube housing assemblies, X-ray controls, X-ray high-voltage generators, tables, cradles, film changers, vertical cassette holders mounted in a fixed location and cassette holders with front panels, and beam-limiting devices manufactured after August 1, 1974.

* * * * *

(b) * * *

(57) "Cassette holder" means a device, other than a spot-film device, that supports and/or fixes the position of an X-ray film cassette during an X-ray exposure.

* * * * *

(h) * * *

(2) *Tube housing assemblies.* For each tube housing assembly, there shall be provided:

(i) Statements of the leakage technique factors for all combinations of tube housing assemblies and beam-limiting devices for which the tube housing assembly manufacturer states compatibility, the minimum filtration permanently in the useful beam expressed as millimeters of aluminum equivalent, and the peak tube potential at which the aluminum equivalent was obtained;

* * * * *

(4) *Beam-limiting device.* For each variable-aperture beam-limiting device, there shall be provided:

(i) Leakage technique factors for all combination of tube housing assemblies and beam-limiting devices for which the beam-limiting device manufacturer states compatibility; and

* * * * *

(k) *Leaking radiation from the diagnostic source assembly.* The leakage radiation from the diagnostic source assembly measured at a distance of 1 meter in any direction from the source shall not exceed 100 milliroentgens in 1 hour when the X-ray tube is operated at the leakage technique factors. If the maximum rated peak tube potential of the tube housing assembly is greater than the maximum rated peak tube potential for the diagnostic source assembly, positive means shall be provided to limit the maximum X-ray tube potential to that of the diagnostic source assembly. Compliance shall be determined by measurements averaged over an area of 100 square centimeters with no linear dimension greater than 20 centimeters.

* * * * *

2. In § 1020.31 by revising paragraph (g)(1) to read as follows:

§ 1020.31 Radiographic equipment.

* * * * *

(g) * * *

(1) Means shall be provided between the source and the patient for adjustment of the X-ray field size in the plane of the film to the size of that portion of the film which has been selected on the spot-film selector. Such adjustment shall be accomplished automatically when the X-ray field size in the plane of the film is greater than the selected portion of the film. If the X-ray field size is less than the size of the selected portion of the film, the means for adjustment of the field size shall be only at the operator's option.

* * * * * *

3. In § 1020.32 by revising paragraph (b)(2)(iv) to read as follows:

§ 1020.32 Fluoroscopic equipment.

* * * * *

(b) * * *

(2) * * *

(iv) Means shall be provided to permit further limitation of the field. Beam-limiting devices manufactured after (date of publication of the final rule in the Federal Register) and incorporated in equipment with a variable SID and/or a visible area of greater than 300 square centimeters shall be provided with means for stepless adjustment of the X-ray field. Equipment with a fixed SID and a visible area of 300 square centimeters or less shall be provided with either stepless adjustment of the X-ray field or with means to further limit the X-ray field size at the plane of the image receptor to 125 square centimeters or less. Stepless adjustment shall, at the greatest SID, provide continuous field sizes from the maximum obtainable to a field size of 5-by-5 centimeters or less.

* * * * *

Interested persons may, on or before September 12, 1978, submit to the

Hearing Clerk (HFC-20), Food and Drug Administration, room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

NOTE.—The Food and Drug Administration has determined that this proposal will not have a major economic impact as defined by Executive Order 11821 (amended by Executive Order 11949) and OMB Circular A-107. A copy of the economic impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

Dated: July 6, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-19137 Filed 7-13-78; 8:45 am]

[4830-01]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

[LR-217-76]

APPLICATION FOR RECOGNITION AS A QUALIFIED GROUP LEGAL SERVICES PLAN

Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to notice of application for recognition of the status of a qualified group legal services plan. Provisions relating to group legal services plans were added to the tax law by the Tax Reform Act of 1976. The regulations would provide guidance by which a group legal services plan may apply to the Internal Revenue Service for recognition of its status as a qualified plan and would primarily affect administrators or sponsors of group legal services plans.

DATE: Written comments and requests for a public hearing must be delivered or mailed by September 12, 1978. The amendments are proposed to be effective for notices of application for recognition of the status of a qualified group legal services plan submitted after adoption of the amendments.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T:LR-217-76, Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

Richard L. Johnson of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: CC:LR:T:LR-217-76, 202-566-3287 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 120(c)(4) of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to one provision of section 2134 of the Tax Reform Act of 1976 (90 Stat. 1926), and are to be issued under the authority contained in sections 120(c)(4) and 7805 of the Internal Revenue code of 1954 (90 Stat. 1926 and 68A Stat. 917; 26 U.S.C. 120(c)(4) and 7805).

PREPAID LEGAL SERVICES

Section 120 was added to the Internal Revenue Code of 1954 by the Tax Reform Act of 1976. The new section excludes from the gross income of an employee, or the employee's spouse or dependents, amounts contributed on their behalf by an employer to a qualified group legal services plan. Benefits received under the plan are also excluded from the gross income of the recipient. The benefits may be either personal legal services provided under the plan directly to a participant, or reimbursement under the plan for personal legal services otherwise obtained.

REQUIREMENT FOR NOTICE

Section 120(c)(4) provides that in order to be a qualified group legal services plan, the plan must give notice to the Secretary of the Treasury that it is applying for recognition of its status as a qualified plan. The notice must be filed on Form 1024, Application for Recognition of Exemption Under Section 501(a) or for Determination Under Section 120, with the accompanying Schedule L. In general, a plan must file the notice before the end of its first plan year in order to be regarded as a qualified plan from the beginning of the first plan year. If the notice is filed after the end of the first plan year, a plan will be a qualified plan (if it otherwise satisfies the requirements for qualification) from the date on which the notice is filed. However, if the notice is filed any time before the 91st day after the amendments proposed by this document are adopted, the plan will be a qualified plan (if it otherwise satisfies the requirements for qualification) from the date of adoption of the plan.

PLANS IN EXISTENCE ON JUNE 4, 1976

A written group legal services plan in existence on June 4, 1976, will be deemed a qualified plan until at least April 2, 1977, whether or not a notice of application is filed for the plan. If the plan is maintained pursuant to a collective bargaining agreement in effect on October 4, 1976, this period of deemed qualification will extend until the agreement terminates, but not beyond December 31, 1981. In order for a plan to be a qualified plan for any period after the period of deemed qualification, a notice of application must be filed under these regulations. Although a plan in existence on June 4, 1976, need not file a notice of application to be a qualified plan for the period of deemed qualification, the plan is not relieved of any other filing requirements, including any requirement for an annual information return.

COMMENTS AND REQUESTS FOR A PUBLIC HEARING

Before adopting these proposed regultions, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the FEDERAL REGISTER.

DRAFTING INFORMATION

The principal author of these proposed regulations was Richard Johnson of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

PROPOSED AMENDMENTS TO THE REGULATIONS

It is proposed to amend 26 CFR part 1 by adding a new § 1.120 (c)(4)-1 as follows:

§ 1.120(c)(4)-1 Notice of application for recognition of status of qualified group legal services plan.

(a) *In general.* In order for a plan to be a qualified group legal services plan for purposes of the exclusion from gross income provided by section 120(a), the plan must give notice to the Internal Revenue Service that it is

applying for recognition of its status as a qualified plan. Paragraph (b) of this section describes how the notice is to be filed for the plan. Paragraph (c) of this section describes the action that the Internal Revenue Service will take in response to the notice submitted for the plan. Paragraph (d) of this section describes the period of plan qualification.

(b) *Filing of notice*—(1) *In general.* A notice of application for recognition of the status of a qualified group legal services plan must be filed with the key district director of internal revenue as described in § 601.201(n). The notice must be filed on Form 1024, Application for Recognition of Exemption Under Section 501(a) or for Determination Under Section 120, with the accompanying schedule L, and must contain the information required by the form and any accompanying instructions. The form may be filed by either the employer sponsoring the plan or the person administering an employer-adopted plan. See paragraph (e) of this section for special rules and definitions relating to information required to be filed on schedule L.

(2) *Plans to which more than one employer contributes; multiple filings required.* Except in the case of a plan to which subparagraph (3) of this paragraph applies, if more than one employer contributes to a plan, information required to be filed on schedule L which relates to employees of a contributing employer must be filed separately for each contributing employer. Accordingly, a separate schedule L must be filed for the plan for each contributing employer after the employer adopts the plan. Information required to be filed on schedule L which does not relate to the employees of a contributing employer need be filed only once, and need not be repeated on each schedule L filed for the plan.

(3) *Plans to which more than one employer contributes for which no multiple filings required.* If a plan to which more than one employer contributes is a plan to which this subparagraph applies, only one schedule L is required to be filed for the plan, regardless of the number of employers who contribute to the plan. A separate schedule L is not required for each contributing employer. Information required by schedule L that relates to employees of contributing employers is required only for those employers who adopt the plan before the date the schedule L is filed for the plan. A schedule L need not be filed with respect to employers who thereafter adopt the plan. In general, this subparagraph applies to any plan that is maintained pursuant to a collective bargaining agreement between employee representatives and more than one employer who is required by the plan instrument or other agreement to contribute to the plan with respect to employees (or their spouses or dependents) participating in the plan. This subparagraph does not apply, however, if all employers required to contribute to the plan are corporations which are members of a controlled group of corporations within the meaning of section 1563(a), determined without regard to section 1563(e)(3)(C). If all employers required to contribute to the plan are corporations which are members of such a controlled group, the filing requirements described in subparagraph (2) of this paragraph apply, notwithstanding that the plan is maintained pursuant to a collective bargaining agreement.

(c) *Internal Revenue Service action on notice of application for recognition.* The Internal Revenue Service will issue to the person submitting form 1024 and schedule L a ruling or determination letter stating that the plan is or is not a qualified group legal services plan. For general procedural rules, see § 601.201 (a) through (n), as that section relates to rulings and determination letters.

(d) *Period of plan qualification*—(1) *In general.* In the case of a favorable determination, the plan will be considered a qualified group legal services plan. If a schedule L required to be filed by or on behalf of an employer is filed before—

(i) The end of the first plan year (as defined in the plan),

(ii) The end of the plan year within which the employer adopts the plan, or

(iii) (A date 91 days after this section is published in the FEDERAL REGISTER as a final regulation),

the period of plan qualifications with respect to the employer will begin on the date the plan is adopted by the employer (or, if later, January 1, 1977). If the schedule L is not filed before the latest of the dates described in subdivisions (i), (ii), and (iii), the period of plan qualification with respect to the employer will begin on the date of filing. If no schedule L is required to be filed by or on behalf of an employer (see paragraph (b)(3) of this section), the period of plan qualification with respect to the employer will begin on the date the plan is adopted by the employer (or, if later, January 1, 1977). However, if a plan is materially modified to conform to the requirements of section 120 either before or after a schedule L is filed, the period of plan qualification will not include any period before the effective date of the modifications.

(2) *Plans in existence on June 4, 1976.* (i) Notwithstanding paragraph (d)(1) of this section, a written group legal services plan providing for employer contributions which was in existence on June 4, 1976, will be considered a qualified group legal services plan for the period January 1, 1977, through April 2, 1977. However, if the plan is maintained pursuant to one or more agreements which were in effect on October 4, 1976, and which the Secretary of Labor finds to be collective bargaining agreements, the period of deemed qualification will extend beyond April 2, 1977, and end on the date on which the last of the collective bargaining agreements relating to the plan terminates. Extensions of a bargaining agreement which are agreed to after October 4, 1976, are to be disregarded. The period of deemed qualification for a plan maintained pursuant to a collective bargaining agreement will not, however, extend beyond December 31, 1981.

(ii) A written group legal services plan will be considered to have been in existence on June 4, 1976, if on or before that date the plan was reduced to writing and adopted by one or more employers. No amounts need have been contritubed under the plan as of June 4, 1976.

(e) *Definitions and special rules*—(1) *Applicability.* The definitions and special rules in this paragraph apply with respect to information required to be filed on schedule L accompanying form 1024.

(2) *Employee.*—(i) The term "employee" includes an individual who is an employee within the meaning of section 410(c)(1) (relation to self-employed individuals).

(ii) An individual who owns the entire interest in an unincorporated trade or business is treated as his own employee.

(iii) Each partner who is an employee within the meaning of section 401(c)(1) is treated as an employee of the partnership.

(3) *Officer.* An officer is an individual who is an officer within the meaning of regulations prescribed under 414(c).

(4) *Shareholder.* The term "shareholder" includes an individual who is a shareholder as determined by the attribution rules under section 1563 (d) and (e), without regard to section 1563(e)(3)(C).

(5) *Self-employed.* An individual is "self-employed" if he is self-employed within the meaning of section 401(c)(1).

(6) *Highly compensated.* The term "highly compensated" has the same meaning for purposes of the information required by schedule L, as for purposes of section 410(b)(1)(B).

(f) *Effective date.* This section is effective for notices of application for recognition of the status of a qualified group legal services plan submitted

after (date of publication of this section as a final regulation).

JEROME KURTZ,
Commissioner of Internal Revenue.

[FR Doc. 78-19367 Filed 7-13-78; 8:45 am]

[4830-01]

[26 CFR Part 1]

[LR-288-74]

SALARY REDUCTION PLANS

Withdrawal of Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: The purpose of this document is to withdraw a notice of proposed rulemaking relating to the tax treatment of amounts contributed under a salary reduction plan or arrangement to certain qualified trusts, qualified bond purchase plans, or to purchase certain qualified annuity contracts. Section 2006(b) of the Employee Retirement Income Security Act of 1974 precludes present adoption of final salary reduction regulations relating to qualified salary reduction plans or arrangements in existence on June 27, 1974. The notice of proposed rulemaking withdrawn by this document appeared in the FEDERAL REGISTER for December 6, 1972 (37 FR 25938).

FOR FURTHER INFORMATION CONTACT:

William E. Mantle of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224. (Attention CC:LR:T, LR-288-74), 202-566-3734.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The notice of proposed rulemaking withdrawn by this document proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 402, 403, and 405 of the Internal Revenue Code of 1954 to clarify the tax treatment of amounts contributed under a salary reduction plan or arrangement to a trust of the type described in section 401(a), to a qualified bond purchase plan described in section 405(a), or to purchase an annuity contract for an employee under a qualified plan described in section 403(a).

Section 2006(b) of the Employee Retirement Income Security Act of 1974 (88 Stat. 992) precludes present adoption of final salary reduction regulations relating to qualified salary reduction plans or arrangements in existence on June 27, 1974. Thus, the proposed salary reduction regulations published in the FEDERAL REGISTER for December 6, 1972 (37 FR 25938) are being withdrawn. The withdrawal of these regulations has no effect upon the status of a notice of proposed rulemaking under section 61 relating to certain nonqualified compensation reduction plans or arrangements which was published in the FEDERAL REGISTER for February 3, 1978 (43 FR 4638).

WITHDRAWAL OF PROPOSED AMENDMENTS

Accordingly, the notice of proposed rulemaking relating to amounts contributed under salary reduction plans or arrangements which was published in the FEDERAL REGISTER for December 6, 1972 (37 FR 25938) is hereby withdrawn.

JEROME KURTZ,
Commissioner of Internal Revenue.

[FR Doc. 78-19366 Filed 7-13-78; 8:45 am]

[4830-01]

[26 CFR Parts 1 and 301]

[LR-244-76]

ELECTION BY NONRESIDENT ALIEN TO BE TREATED AS RESIDENT AND TREATMENT OF COMMUNITY INCOME WHERE ELECTION NOT MADE

Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the election by a nonresident alien to be treated as a resident and treatment of community income where the election is not made. Certain provisions were added to the applicable tax law by the Tax Reform Act of 1976. The regulations would provide the public with the guidance needed to take advantage of these new provisions. The regulations would affect certain taxpayers who are nonresident aliens or who are married to nonresident aliens and certain nonresident aliens who are not taxpayers but who are married to citizens or residents of the United States.

DATES: Written comments and requests for a public hearing must be delivered or mailed by September 12, 1978. The amendments are proposed to be effective in part for taxable years ending after December 30, 1975, and in part for taxable years beginning after December 31, 1976.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

Kenneth Klein, of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3459.

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document contains proposed amendments to the income tax regulations (26 CFR Part 1) and the regulations on procedure and administration (26 CFR Part 301) under sections 871, 879, 981, 6012, 6013, 6072, 6073, 6091, 6109, and 6851 of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 1012 of the Tax Reform Act of 1976 (90 Stat. 1612) and are to be issued under the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

STATUTORY BASES

Section 1012(a) of the Tax Reform Act of 1976 amends section 6013 of the Internal Revenue Code of 1954 by adding subsections (g) and (h), which provide that a nonresident alien may, under certain circumstances, elect to be treated as a resident. The principal effect of this election is to permit the nonresident alien to file a joint return with a spouse who is a resident or citizen of the United States. Section 1012(b) of the act repeals section 981 of the code and adds in its place section 879 to provide rules for the treatment of community income where an election under section 6013 (g) or (h) is not in effect with respect to a nonresident alien spouse. Section 1012(c) of the act amends section 6073 of the code to provide that nonresident aliens are not required to file a declaration of estimated tax until the alien's income tax return for the prior taxable year is due.

MANNER OF ELECTION

The proposed regulations provide that an election under section 6013 (g) or (h) generally is made by attaching a statement to the income tax return for the first year to which the election is to apply. The statement must contain a declaration that the election is being made and the names, addresses, and taxpayer identifying numbers of the electing spouses. The regulations provide that most circumstances, a voluntary revocation of the election under section 6013(g) is to be made in a similar manner.

CERTAIN CONDITIONS FOR ELECTION

The proposed regulations provide that the determination of whether

taxpayers meet the requirements of section 6013 (g) or (h) for any taxable year shall be made at the close of that taxable year. Accordingly, the regulations provide that an election or revocation can be made on behalf of a spouse who dies after the close of a taxable year by the spouse's executor or administrator. The regulations require as a prerequisite to the making of an election under section 6013 (g) or (h) that the spouse of the nonresident alien be a U.S. citizen or resident on the last day of the first taxable year to which the election applies.

COMMUNITY INCOME

The proposed regulations explain the treatment given various types of community income in those cases where the spouses do not make an election under section 6013 (g) or (h). The regulations also provide cross-references relating to the election under section 6013 (g) or (h). Section 1.6013-6 is "reserved" pending formulation of regulations under section 6013(f), relating to joint returns where an individual is in missing status.

COMMENTS AND REQUESTS FOR A PUBLIC HEARING

Before adopting these proposed regulations consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the FEDERAL REGISTER.

DRAFTING INFORMATION

The principal author of these proposed regulations was Jason R. Felton of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasurey Department participated in developing these regulations both on matters of substance and style.

PROPOSED AMENDMENTS TO THE REGULATIONS

The proposed amendments to 26 CFR Parts 1 and 301 are as follows:

PARAGRAPH 1. Paragraph (a) of § 1.871-1 is amended by adding three sentences at the end that read as follows:

§ 1.871-1 Classification and manner of taxing alien individuals.

(a) *Classes of aliens.* * * * However, nonresident alien individuals may elect, under section 6013 (g) or (h), to be treated as resident aliens for purposes of determining their income tax liability under chapter 1 of the code. Accordingly, any reference in §§ 1.1-1 thfough 1.1388-1 of this part to nonresident alien individuals does not include those with respect to whom an election under section 6013 (g) or (h) is in effect, unless otherwise specifically provided. Similarly, any reference to resident alien individuals includes those with respect to whom an election is in effect, unless otherwise specifically provided.

* * * * *

PAR. 2. Paragraph (a)(1) of § 1.871-13 is amended by adding two sentences at the end that read as follows:

§ 1.871-13 Taxation of individuals for taxable year of change of U.S. citizenship or residence.

(a) *In general.* (1) * * * This section does not apply to alien individuals treated as residents for the entire taxable year under section 6013 (g) or (h). These individuals are taxed under the rules in § 1.1-1(b).

* * * * *

PAR. 3. There is added after § 1.878 the following new section:

§ 1.879-1 Treatment of community income.

(a) *Treatment of community income.*—(1) *In general.* For taxable years beginning after December 31, 1976, community income of a citizen or resident of the United States who is married to a nonresident alien individual, and the deductions properly allocable to that income, shall be divided between the U.S. citizen or resident spouse and the nonresident alien spouse in accordance with the rules in section 879 and paragraph (a)(2) through (a)(6) of this section. This section does not apply for any taxable year with respect to which an election under section 6013 (g) or (h) is in effect. Community income for this purpose means all gross income, whether derived from sources within or without the United States, which is treated as community income of the spouses under the community property laws of the State, foreign country, or possession of the United States having jurisdiction to determine the legal ownership of the income. A spouse has ownership of the income for this purpose if under the applicable community property law this spouse has a proprietary vested interest in the income.

(2) *Earned income.* Wages, salaries, or professional fees, and other amounts received as compensation for personal services actually performed, which are community income for the taxable year, shall be treated as the income of the spouse who actually performed the personal services. This paragraph (a)(2) does not apply, however, to the following items of community income:

(i) Community income derived from any trade or business carried on by the husband or the wife, but not including any income that would be treated as earned income under the second sentence of section 911(b).

(ii) Community income attributable to a spouse's distributive share of the income of a partnership to which paragraph (a)(4) of this section applies.

(iii) Community income consisting of compensation for personal services rendered to a corporation which represents a distribution of the earnings and profits of the corporation rather than a reasonable allowance as compensation for the personal services actually performed, but not including any income that would be treated as earned income under the second sentence of section 911(b).

(iv) Community income derived from property which is acquired as consideration for personal services performed.

These items of community income are divided in accordance with the rules in paragraph (a)(3) through (a)(6) of this section.

(3) *Trade or business income.* If any income derived from a trade or business carried on by the husband or wife is community income for the taxable year, all of the gross income, and the deductions attributable to that income, shall be treated as the gross income and deductions of the husband. However, if the wife exercises substantially all of the management and control of the trade or business, all of the gross income and deductions shall be treated as the gross income and deductions of the wife. This paragraph (a)(3) does not apply to any income derived from a trade or business carried on by a partnership of which both or one of the spouses is a member (see paragraph (a)(4) of this section). For purposes of this paragraph (a)(3), income derived from a trade or business includes any income derived from a trade or business in which both personal services and capital are material income producing factors, but does not include income treated as earned income under the second sentence of section 911(b). The term "management and control" means management and control in fact, not the management and control imputed to the husband under the community property laws of a State, foreign county, or possession of the United States. For example, a wife who operates a beauty parlor without any appreciable collaboration on the part of a husband is considered as having substantially all of the management and control of the business

despite the provisions of any community property laws of a State, foreign country, or possession of the United States vesting in the husband the right of management and control of community property. The income and deductions attributable to the operation of the beauty parlor are considered the income and deductions of the wife.

(4) *Partnership income.* If any portion of a spouse's distributive share of the income of a partnership, of which the spouse is a member, is community income for the taxable year, all of that distributive share shall be treated as the income of that spouse and shall not be taken into account in determining the income of the other spouse. If both spouses are members of the same partnership, the distributive share of the income of each spouse which is community income shall be treated as the income of that spouse. A spouse's distributive share of the income of a partnership that is community income shall be determined as provided in section 704 and the regulations thereunder.

(5) *Income from separate property.* Any community income for the taxable year, other than income described in section 879(a) (1) or (2) and paragraph (a) (2), (3), or (4) of this section, which is derived from the separate property of one of the spouses shall be treated as the income of that spouse. The determination of what property is separate property for this purpose shall be made in accordance with the laws of the State, foreign country, or possession of the United States which, in accordance with paragraph (a)(1) of this section, has jurisdiction to determine that the income from the property is community income.

(6) *Other community income.* Any community income for the taxable year, other than income described in section 879(a) (1), (2), or (3), and paragraph (a) (2), (3), (4), or (5) of this section, shall be treated as income of that spouse who has a proprietary vested interest in that income under the laws of the state, foreign country, or possession of the United States which, in accordance with paragraph (a)(1) of this section, has jurisdiction to determine that the income is community income. Thus, for example, this paragraph (a)(6) applies to community income not described in paragraph (a) (2), (3), (4), or (5) of this section which consists of dividends, interest, rents, royalties, or gains, from community property or of the earnings of unemancipated minor children.

(7) *Illustrations.* The application of this paragraph may be illustrated by the following examples:

Example (1). H, a U.S. citizen, and W, a nonresident alien individual, each of whose taxable years is the calendar year, were married throughout 1977. H and W were residents of, and domiciled in, foreign country Z during the entire taxable year. No election under section 6013 (g) or (h) is in effect for 1977. During 1977, H earned $10,000 from the performance of personal services as an employee. H also received $500 in dividend income from stock which under the community property laws of country Z is considered to be the separate property of H. W had no separate income for 1977. Under the community property laws of country Z all income earned by either spouse is considered to be community income, and one-half of this income is considered to belong to the other spouse. In addition, the laws of country Z provide that all income derived from property held separately by either spouse is to be treated as community income and treated as belonging one-half to each spouse. Thus, under the community property laws of country Z, H and W are both considered to have realized income of $5,250 during 1977, even though Z's laws recognize the stock as the separate property of H. Under the rules of paragraph (a) (2) and (5) of this section all of the income of $10,500 derived during 1977 is treated, for U.S. income tax purposes, as the income of H.

Example (2). (a) The facts are the same as in example (1), except that H is the sole proprietor of a retail merchandising company, which has a $10,000 profit during 1977. W exercises no management and control over the business. In addition, H is a partner in a wholesale distributing company, and his distributive share of the partnership profit is $5,000. Both of these amounts of income are treated as community income under the community property laws of country Z, and under these laws both H and W are treated as realizing $7,500 of the income. Under the rule of paragraph (a) (3) and (4) of this section all $15,000 of the income is treated as the income of H for U.S. income tax purposes.

(b) Under the facts in (a), it is not necessary to determine the amount of the $10,000 profit from the retail merchandising company that is earned income under the second sentence of section 911(b). Because W exercises no management and control over the company all of the income is treated as the income of H, whether it is considered earned or from a trade or business under paragraph (a) (2) and (3) of this section.

(c) If W exercises substantially all of the management and control over the company, and if it is assumed that 25 percent of the profit is considered under the second sentence of section 911(b) to be a reasonable allowance for H's services, then for U.S. income tax purposes $2,500 of the $10,000 profit is treated as the income of H, and the remaining $7,500 is treated as the income of W.

Example (3). The facts are the same as in example (1), except that H also received $1,000 in dividends on stock held separately in his name. Under the community property laws of country Z the stock is considered to be community property, the dividends to be community income, and one-half of the income to be the income of each spouse. Under the rule of paragraph (a)(6) of this section, $500 of the dividend income is treated, for U.S. income tax purposes, as the income of each spouse.

(b) *Definitions and other special rules.*—(1) *Spouses with different taxable years.* A special rule applies if the nonresident alien and the United States citizen or resident spouse of the alien do not have the same taxable years, as defined in section 441(b) and the regulations thereunder. The special rule is as follows. With respect to the U.S. citizen or resident spouse, section 879 and this section shall apply to each taxable year of the U.S. citizen or resident spouse for which no election under section 6013 (g) or (h) is in effect. With respect to the nonresident alien spouse, section 879 and this section apply to each period falling within the consecutive taxable years of the nonresident alien spouse which coincides with a taxable year of the U.S. citizen or resident spouse to which section 879 and this section apply.

(2) *Determination of marital status.* For purposes of this section, marital status shall be determined under section 143(a).

§ 1.981 [Revoked]

PAR. 4. Section 1.981 is repealed.

PAR. 5. There is added after § 1.972-1 the following new section:

§ 1.981-0 Repeal of section 981; effective dates.

The provisions of section 981 are not effective for taxable years beginning after December 31, 1976. For the treatment of the community income of aliens and their spouses for taxable years beginning after December 31, 1976, see section 879 and the regulations thereunder.

PAR. 6. Section 1.981-1 is amended as follows:

1. The title is amended to read as follows:

§ 1.981-1 Foreign law community income for taxable years beginning after December 31, 1966, and before January 1, 1977.

2. Paragraph (a)(1) is amended by inserting the phrase "and before January 1, 1977," in the first sentence between the phrases "after December 31, 1966" and the phrase ", may make a binding election".

§ 1.6012-1 [Amended]

PAR. 7. Section 1.6012-1 is amended as follows:

1. Paragraph (b)(1)(i) is amended by inserting the phrase "(other than one treated as a resident under section 6013 (g) or (h))" in the first sentence between the phrases "nonresident alien individual" and "who is engaged".

2. Paragraph (b)(2)(i) is amended by inserting the phrase "(other than one treated as a resident under section 6013 (g) or (h))" in the first sentence between the phrases "A nonresident alien individual" and "who at no time".

3. Paragraph (b)(2)(ii)(*a*) is amended by deleting the period at the end of

the second sentence and inserting in its place the phrase ", unless an election under section 6013 (g) or (h) is in effect for the alien."

4. Paragraph (b)(2)(ii)(*b*) is amended by deleting the period at the end of the first sentence, and inserting in its place the phrase ", even if an election under section 6013(g) was in effect for the taxable year preceding the year of abandonment."

PAR. 8. Paragraph (b) of § 1.6013-1 is revised to read as follows:

§ 1.6013-1 Joint returns.

* * * * *

(b) *Nonresident alien.* A joint return shall not be made if either the husband or wife at any time during the taxable year is a nonresident alien, unless an election is in effect for the taxable year under section 6013 (g) or (h) and the regulations thereunder.

* * * * *

PAR. 9. Section 1.6013-2 is amended by adding a new paragraph (a)(4) which reads as follows:

§ 1.6013-2 Joint return after filing separate return.

(a) *In general.*

* * * * *

(4) A nonresident alien treated as a resident under section 6013 (g) or (h) for any taxable year ending on or after December 31, 1975, but before December 31, 1978, and the alien's U.S. citizen or resident spouse may file a joint return for that taxable year, even though one or both of the spouses have previously filed separate returns for that taxable year. In this case, the rule in paragraph (a)(3) of this section does not apply.

* * * * *

PAR. 10. There is added immediately after § 1.6013-5 the following new sections:

§ 1.6013-6 [Reserved]

§ 1.6013-7 Election to treat nonresident individual as resident of the United States.

(a) *Election for special treatment*—(1) *In general.* Two individuals who are husband and wife at the close of a taxable year ending on or after December 31, 1975, may make an election under this section for that taxable year if, at the close of that year, one spouse is a citizen or resident of the United States and the other spouse is a nonresident alien. The effect of the election is that the nonresident alien spouse is treated as a resident of the United States for purposes of chapter 1 and sections 6012, 6013, 6072, and 6091 of the Code for all that taxable year. An election made under this section is in effect for the taxable year for which made and for all subsequent years of the husband and wife, except—

(i) Any taxable year for which the election is suspended, as described in paragraph (a)(3) of this section, and

(ii) Any taxable year for which the election is terminated in accordance with paragraph (b) of this section and all subsequent taxable years.

A husband and wife may not make an election if an election previously made under this section by either spouse has been terminated under paragraph (b) of this section.

(2) *Particular rules.* (i) As used in paragraph (a)(3) of this section, the term "U.S. spouse" means any married individual who is a citizen or resident of the United States at any time during a taxable year.

(ii) Whether an individual is a resident of the United States or a nonresident alien is determined without regard to this section or § 1.6013-8, but by application of the principles of §§ 1.871-2 through 1.871-5 relating to what constitutes residence or nonresidence in the United States by an alien individual.

(iii) Whether two individuals are married at the close of a taxable year is determined by application of the rules in § 1.6013-4(a).

(iv) The provisions of section 879 and the regulations thereunder shall not apply for any taxable year for which an election under this section is in effect.

(v) Whether the election affects the alien's tax treatment under a U.S. income tax convention with another country depends on the language of the convention.

(3) *Suspension of election.* (i) An election made under this section is suspended and is not in effect for a taxable year subsequent to the first taxable year for which made if neither spouse is a U.S. spouse during that subsequent taxable year. Thus, for example, the election is in suspense if both spouses are nonresident aliens for the entire taxable year.

(ii) If either spouse dies during any taxable year for which the election under this section is in effect, other than the first taxable year for which the election is to be in effect, the taxable year shall include, solely for purposes of this paragraph (a)(3), only those days during the taxable year on which both spouses are alive. Thus, for example, if the U.S. spouse dies during the taxable year, the election is not suspended for that year even if the surviving nonresident alien spouse never acquires U.S. citizenship or residency. Similarly, if the nonresident alien spouse dies during the taxable year, the election is not suspended for that year even if the surviving U.S. spouse subsequently abandons U.S. citizenship or residency. However, if neither spouse was a U.S. spouse at any time during the period of the taxable year when both spouses were alive, the election is suspended for that year even if the surviving spouse subsequently acquires U.S. citizenship or residency.

For the effect of the death of either spouse on the status of the election in subsequent taxable years, see paragraph (b)(2) of this section.

(4) *Time and manner of making an election.* (i) A husband and wife shall make the election under this section by attaching a statement to their return for the first taxable year for which the election is to be in effect. The election must be made on or before the last day prescribed by section 6072(a) and 6081(a) for filing the return to which the statement of election is attached. If either or both spouses die after the close of the taxable year but before the return is filed, the election may be made by the executor, administrator, or other person charged with the property of the deceased spouse.

(ii) The statement must contain a declaration that the election is being made and that the requirements of paragraph (a)(1) of this section are met for the taxable year. The statement must also contain the name, address, and taxpayer identifying number of each spouse. If the election is being made on behalf of a deceased spouse, the statement must contain the name and address of the executor, administrator, or other person making the election on behalf of the deceased spouse. The statement must be signed by both persons making the election.

(iii) Notwithstanding the rules in paragraph (a)(4)(i) of this section, the election for taxable years ending on or after December 31, 1975, but before December 31, 1976, shall be made by filing a claim for refund in the manner set forth in § 301.6402-3 (a) and (e) of this chapter within the time prescribed by section 6511. The statement described in paragraph (a)(4)(ii) of this section must be attached to the claim for refund. This election for taxable years ending on or after December 31, 1975, but before December 31, 1976, may be made even though an election has already been made for taxable years ending on or after December 31, 1976.

(b) *Termination of election*—(1) *Revocation.* (i) An election under this section shall terminate if either spouse revokes the election. An election that is revoked terminates as of the first taxable year for which the last day prescribed by section 6072(a) and 6081(a) for filing the return of tax under chapter 1 of the Code has not yet occurred.

(ii) Revocation of the election is made by filing a statement of revocation in the following manner. If the spouse revoking the election is required to file a return under section 6012, the statement is filed by attaching it to the return for the first taxable year to which the revocation applies. If the spouse revoking the election is not required to file a return under section 6012, but files a claim for refund under section 6511, the statement is filed by attaching it to the claim for refund. If the spouse revoking the election is not required to file a return and does not file a claim for refund, the statement is filed by submitting it to the service center director with whom was filed the most recent joint return of the spouses. The revocation may, if the revoking spouse dies after the close of the first taxable year to which the revocation applies but before the return, claim for refund, or statement of revocation is filed, be made by the executor, administrator or other person charged with the property of the deceased spouse.

(iii) The filing of a separate return for a taxable year during which the election is otherwise in effect by either spouse is considered a revocation of the election. However, if the spouses subsequently file a joint return on or before the last day prescribed by section 6072(a) and 6081(a) for filing the return of tax under chapter 1 of the Code, the revocation made by the filing of the separate return is considered withdrawn. For taxable years ending before December 31, 1978, the revocation made by the filing of the separate return is considered withdrawn if by December 31, 1978, the spouses file a joint return for the taxable year.

(iv) A revocation of the election is effective as of a particular taxable year if it is filed on or before the last day prescribed by section 6072(a) and 6081(a) for filing the return of tax under chapter 1 for that taxable year. However, the revocation is not final until that last day.

(v) The statement of revocation must contain a declaration that the election under this section is being revoked. The statement must also contain the name, address, and taxpayer identifying number of each spouse. If the revocation is being made on behalf of a deceased spouse, the statement must contain the name and address of the executor, administrator, or other person revoking the election on behalf of the deceased spouse. The statement must also include a list of the states, foreign countries, and possessions of the United States whose community property laws apply to the gross income of the spouses. The statement must be signed by the person revoking the election.

(2) *Death.* An election under this section shall terminate if either spouse dies. An election that terminates on account of death terminates as of the first taxable year of the surviving spouse following the taxable year in which the death occurred. However, if the surviving spouse is a citizen or resident of the United States who is entitled to the benefits of section 2, the election terminates as of the first taxable year following the last taxable year for which the surviving spouse is entitled to the benefits of section 2. If both spouses die within the same taxable year, the election terminates as of the first day after the close of the taxable year in which the deaths occurred.

(3) *Legal separation.* An election under this section terminates if the spouses legally separate under a degree of divorce or of separate maintenance. An election that terminates on account of legal separation terminates as of the close of the taxable year preceding the taxable year in which the separation occurs. The rules in § 1.6013-4(a) are relevant in determining whether two spouses are legally separated.

(4) *Inadequate records.* An election under this section may be terminated by the Commissioner if it is determined that either spouse has failed to keep adequate records. An election that is terminated on account of inadequate records terminates as of the close of the taxable year preceding the taxable year for which the Commissioner determines that the election should be terminated. Adequate records are the books, records, and other information reasonably necessary to ascertain the amount of liability for taxes under chapter 1 of the code of either spouse for the taxable year. Adequate records also includes the granting of access to the books and records.

§ 1.6013-8 Joint return for year in which nonresident alien becomes resident of the United States.

(a) *Election for special treatment.*— (1) *In general.* Two individuals who are husband and wife at the close of a taxable year ending on or after December 31, 1975, may make an election under this section for that taxable year if one spouse is a citizen or resident of the United States on the last day of that taxable year and the other spouse is a nonresident alien at the beginning of that taxable year and a citizen or resident of the United States at the close of that taxable year. The effect of the election is that the nonresident alien spouse is treated as a resident of the United States for purposes of chapter 1 and sections 6012, 6013, 6072, and 6091 of the code for all of that taxable year. A husband and wife may not make an election if an election has previously been made under this section by either spouse.

(2) *Particular rules.* The rules in § 1.6013-7(a)(2) are applicable to this section.

(3) *Time and manner of making an election.* A husband and wife shall make the election under this section in accordance with the rules in § 1.6013-7(a)(4).

(b) *Section 6013(g) election in effect.* If an election under section 6013(g) is in effect for a year subsequent to the first taxable year for which made and during that subsequent year the husband and wife meet the requirements of section 6013(h) and paragraph (a)(1) of this section, then the election under section 6013(g) shall apply to that subsequent taxable year. A separate election under section 6013(h) is not required for that subsequent taxable year.

§ 1.6072-1 [Amended]

PAR. 11. Paragraph (c) of § 1.6072-1 is amended by inserting the phrase "(other than one treated as a resident under section 6013 (g) or (h))" in the first sentence between the phrases "nonresident alien individual" and "and of a foreign trust."

PAR. 12. Paragraph (a) of § 1.6073-1 is amended by adding two sentences at the end that read as follows:

§ 1.6073-1 Time and place for filing declarations of estimated tax by individuals.

(a) *Individuals other than farmers or fishermen.* * * * A special rule applies to nonresident aliens who do not have wages subject to withholding under chapter 24 of the code and are not treated as residents under section 6013 (g) or (h) of the code. For taxable years beginning after December 31, 1976, these aliens are not required to file a declaration of estimted tax before June 15th.

* * * * *

§ 1.6091-3 [Amended].

PAR. 13. Paragraph (d) of § 1.6091-3 is amended by deleting the period at the end, and inserting in lieu thereof the phrase "(other than one treated as a resident under section 6013 (g) or (h)).".

§ 1.6851-2 [Amended].

PAR. 14. Paragraph (b)(1)(ii) of § 1.6851-2 is amended as follows:

1. The phrase "(or treated as a resident under section 6013 (g) or (h))" is inserted in the first sentence between the phrases "possession thereof" and "who intends to continue."

2. The phrase "(or treatment as a resident)" is inserted in the first sentence between the phrases "to continue such residence" and "shall be treated."

PAR. 15. Paragraph (g) of § 301.6109-1 is amended by adding a sentence at the end that reads as follows:

§ 301.6109-1 Identifying numbers.

* * * * *

(g) *Nonresident alien exclusion.* * * * The exclusion in this paragraph does not apply to nonresident aliens treated as residents under section 6013 (g) or (h).

* * * * *

JEROME KURTZ,
Commnissioner of Internal Revenue.

[FR Doc. 78-19368 Filed 7-13-78; 8:45 am]

[4310-70]

DEPARTMENT OF THE INTERIOR

National Park Service

[36 CFR Part 7]

ROCKY MOUNTAIN NATIONAL PARK, COLO.

Artifical Lights for Wildlife Viewing and Parking for Hunters

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The purposes of this amendment are to prohibit the use of artifical lights, including hand-held or vehicle-mounted spotlights and vehicle headlights, for wildlife viewing purposes, and to permit hunters to park vehicles in designated areas on park lands during the hunting seasons prescribed by the State of Colorado. The first amendment is needed to reduce the disturbance of wildlife by visitors using lights. The second change will give hunters access to adjoining National Forest lands which are open to hunting and which are nearly inaccessible except by crossing park lands.

DATE: Written comments, suggestions, or objections will be accepted until August 14, 1978.

ADDRESS: Send comments to: Superintendent, Rocky Mountain National Park, Estes Park, Colo. 80517.

FOR FURTHER INFORMATION CONTACT:

David J. Essex, Chief Park Ranger, Rocky Mountain National Park, Estes Park, Colo. 80517, 303-586-2371, extension 218.

SUPPLEMENTARY INFORMATION: Heavy use by park visitors of high-intensity artificial lights, including hand-held and vehicle-mounted spotlights, flashlights powered by more than three 1.5 volt batteries, and vehicle headlights, has adversely affected nighttime feeding habits of elk in roadside meadows and numbers of elk in major feeding and mating areas.

For the past 4 years, an experimental ban on use of artificial lights to view wildlife, implemented by a closure under authority of 36 CFR §§ 2.6 and 2.32, has been established within the area known as Horseshoe Park. The purpose was twofold: first, elk, like other park wildlife, deserve an undisturbed environment and secondly, all park visitors deserve the opportunity to observe and listen to elk. Experience in the past has shown that the movement of elk from their forested daytime resting areas to the meadows they graze at night has been interrupted by visitors casting the rays of high-intensity spotlights upon the elk as they emerge from the forest during the evening hours. In areas where groups of elk have gathered in the meadow feeding areas during the evening, use of artificial lights has tended to drive the elk back into the forest. Public reaction to the experimental ban on use of artificial lights to view wildlife in Horseshoe Park has been very supportive, once park visitors were advised by signs and press releases of the disruptive effects on wildlife caused by spotlighting.

Further amplification of the problem has been caused by the proliferation of inexpensive high-intensity lights utilizing sealed beam units normally used for aircraft landing purposes; blue-type beams which easily penetrate fog, snow, and rain; and other extremely powerful systems. Additional data on the subject is summarized in a master of science thesis, "Responses of National Park Elk to Human Activity," completed by Richard O. Schultz, Colorado State University, and available for public review at Rocky Mountain National Park.

The intended effect of the new paragraph (g) will be to prohibit the use of artificial lights such as spotlights, flashlights powered by more than 4.5 volts (three standard flashlight batteries), and vehicle headlights as an aid in viewing wildlife within park boundaries.

Current general regulations prohibit the possession of firearms in the park unless they are unloaded and cased or packed in such a way as to prevent their use; the use of park campsites as base camps for hunting outside the park; and hunting, killing, wounding, frightening, capturing, or attempting to kill, wound, frighten, or capture wildlife.

The intended effect of the new paragraph (h) will be to permit hunters to park in designated areas on park lands adjacent to National Forest boundaries in order to gain access to legal hunting areas. They will be permitted to carry an unloaded firearm along short designated corridors not exceeding approximately one-half mile in length, from such parking areas to the park boundary, and will be permitted to remove wildlife lawfully taken, in accordance with Colorado hunting laws and regulations, along the same corridor.

Certain National Forest lands adjoining park boundaries cannot otherwise be reached by hunters without a great degree of difficulty, due to closures of private access routes by landowners. The only alternate route would be over precipitous mountain terrain which would require considerable time and risk to traverse, particularly under snow and ice conditions.

Further, an annual hunter harvest of elk on National Forest lands adjoining the park is compatible with park elk management objectives. Such objectives include, in cooperation with the State of Colorado, adjustment of hunting seasons in elk winter range areas adjacent to park boundaries in order to harvest a certain number of animals, following their migration out of the park, as a means of containing elk numbers within the carrying capacity of the park's elk range.

Authority: Section 3 of the act of August 25, 1916, 39 Stat. 535, as amended (16 U.S.C. 3); section 4 of the Act of January 26, 1915, 38 Stat. 800, as amended (16 U.S.C. 195); and 245 DM-1 (FR 12931).

Dated: June 30, 1978.

DANIEL J. TOBIN, Jr.,
Associate Director, National Park Service.

It is proposed to amend § 7.7 of title 36, Code of Federal Regulations, by the addition of new paragraphs (g) and (h), as follows:

§7.7 Rocky Mountain National Park.

* * * * *

(g) *Lights for wildlife viewing.* Without the previous consent of the Superintendent, no artificial lights shall be used as an aid in viewing wildlife. Such lights include, but are not limited to, hand-held or vehicle-mounted spotlights, flashlights powered by batteries whose total voltage exceeds 4.5 volts, and vehicle headlights.

(h) *Parking and crossing areas for hunters.* During hunting seasons prescribed by the State of Colorado, special parking areas and corridors for hunters may be designated within the park. The locations of parking areas will be announced in local newspapers prior to each hunting season; parking areas and corridors will be designated by signs. Hunters may use these designated areas and corridors only as follows:

(1) The possession of unloaded firearms is permitted, if the breech or chamber of the weapon is open. Muzzle-loading weapons must not contain a powder charge or percussion cap.

(2) Archers must have bows unstrung and arrows cased or otherwise secured.

(3) Game killed on lands adjacent to the park, in accordance with Colorado hunting laws and regulations, may be possessed and transported.

(4) The loading or unloading of hunters or game within the park is permitted only at the designated parking areas.

[FR Doc. 78-19448 Filed 7-13-78; 8:45 am]

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 180]

[FRL 927-7; PP 7E1976/P82]

TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Proposed Tolerance for Bentazon

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes the establishment of a tolerance for residues of the herbicide bentazon on mint. The proposal was submitted by the Interregional Research Project No. 4. This amendment to the regulations would establish a maximum permissible level for residues of bentazon on mint.

DATE: Comments must be received by August 14, 1978.

ADDRESS COMMENTS TO: Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, EPA, Room 401, East Tower, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Mrs. Patricia Critchlow, Registration Division (WH-567), Office of Pesticide Programs, EPA, 202-755-2516.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey State Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, N.J. 08903, on behalf of the IR-4 Technical Committee and the Agricultural Experiment Stations of Idaho, Indiana, Montana, Oregon, Washington, and Wisconsin, and the U.S. Department of Agriculture has submitted a pesticide petition (PP 7E1976) to the EPA. This petition requests that the Administrator propose that 40 CFR 180.355 be amended by the establishment of a tolerance for combined residues of the herbicide bentazon (3-isopropyl-1H-2,1,3-benzothiadiazin-4(3H)-one-2,2-dioxide) and its 6- and 8-hydroxy metabolites in or on the raw agricultural commodity mint at 1 part per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance included a 2-year rat feeding study with a no-observable-effect level (NOEL) of 350 ppm, an 18-month mouse feeding study with an NOEL of 350 ppm, a three-generation rat reproduction study with a NOEL greater than 180 ppm, a rat teratogenicity study with an NOEL of 66.7 milligrams (mg)/kilogram (kg) of body weight (bw), a rat oral lethal dose (LD_{50}) study, a 90-day dog feeding study with an NOEL of 300 ppm and a dominant lethal mutagenicity study in the mouse (negative at 195 mg/kg bw). No additional data is considered desirable to support the proposed tolerance, except extended mutagenicity tests. The acceptable daily intake (ADI) for bentazon is calculated based on the NOEL determined in the rat 2-year feeding study and employing a safety factor of 100; the ADI is 0.175 mg/kg bw/day. Since all previous tolerances for bentazon represents theoretically less than 1 percent of the ADI, and mint and mint oil are very minor components of the human diet, the proposed tolerance can be toxicologically supported.

Tolerances have previously been established for residues of bentazon on a variety of raw agricultural commodities at levels ranging from 3 ppm to 0.02 ppm. The metabolism of bentazon is adequately understood, and an adequate analytical method (gas chromatography with flame photometric detection) is available for enforcement purposes. No regulatory actions are currently pending against the continued registration of bentazon.

The pesticide is considered useful for the purpose for which a tolerance is being sought, and it is concluded that the tolerance of 1 ppm established by amending 40 CFR 180.355 will protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered, or submitted an application for the registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act which contains any of the ingredients listed herein may request, by August 14, 1978, that this rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear a notation indicating both the subject and the petition/document control number, "PP7E1976/P82". All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Office of the Federal Register from 8:30 a.m. to 4 p.m. Monday through Friday.

(Sec. 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346(e)).)

Dated: July 6, 1978.

MARTIN H. ROGOFF,
Acting Director,
Registration Division.

It is proposed that part 180, subpart C, § 180.355 be amended in paragraph (a) by alphabetically inserting a tolerance of 1 ppm on mint in the table to read as follows:

§ 180.355 Bentazon; tolerances for residues.

(a) * * *

Commodity:	*Parts per million*
* * * * *	
Mint	1
* * * * *	

[FR Doc. 78-19371 Filed 7-13-78; 8:45 am]

[6560-01]

[40 CFR Part 180]

[FRL 927-6; PP 6F1729/P58]

TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Proposed Tolerances for 2-[[4-Chloro-6-(ethylamino)-*s*-triazin-2yl] amino]-2-methylpropionitrile

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes to establish tolerances for residues of the herbicide 2-[[4-chloro-6-(ethylamino)-*s*-triazin-2-yl] amino]-2-methylpropionitrile. The proposal to the regulations was submitted by Shell Chemical Co. This amendment to the regulations will establish maximum permissible levels for residues of the herbicide in or on wheat grain and straw, and green wheat forage.

DATE: Comments must be received by August 14, 1978.

ADDRESS: Send comments to Federal Register Section, Technical Services Division (WH569). Office of Pesticide Programs, EPA, Room 401, East Tower, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert Taylor, Product Manager (PM) 25, Registration Division (WH-567) Office of Pesticide Programs, EPA, 202-426-2632.

SUPPLEMENTARY INFORMATION: On February 26, 1976, notice was given (41 FR 8415) that Shell Chemical Co., Suite 200, 1025 Connecticut Avenue NW., Washington, D.C. 20036, had filed a petition (PP 6F1729) with the EPA. This petition proposed to amend 40 CFR 180.307 by establishing tolerances for residues of the herbicide 2-[[4-chloro-6-(ethylamino)-*s*-triazin-2-yl] amino]-2-methylpropionitrile in or on the raw agricultural commodities wheat grain and wheat straw at 0.1 part per million (ppm). Shell Chemical Co. subsequently amended the petition by adding a tolerance of 0.1 ppm for residues of the subject herbicide in or on the raw agricultural commodity green wheat forage. Because of this additional tolerance, the amendment is being proposed at this time to provide an opportunity for public comment.

The data submitted in the petition and all other relevant material have been evaluated, and it is concluded that the tolerances of 0.1 ppm on wheat grain, straw, and green wheat forage established by amending 40 CFR 180.307 will protect the public health.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerances included the oral lethal dose (LD_{50}) for the rat (334 milligrams (mg)/kilogram/(kg) of body weight (bw)); a teratology study in rabbits (negative); a two-year dog feeding study with a no-observable-effect level (NOEL) of 50 ppm; a 2-year rat feeding/oncogenicity study (NOEL 12 ppm); a multigeneration rat reproduction study (NOEL 8 ppm); and several mutagenicity tests consisting of a mouse dominant lethal assay (no effects at 320 mg/kg bw), a host-mediated microbial assay (negative), and a mouse bone marrow chromosome study (negative). Based on the 2-year rat feeding study (NOEL 12 ppm) and a safety factor of 100, the acceptable daily intake (ADI) is 0.006 mg/kg bw/day. Thus, the maximum permissible intake (MPI) for a 60-kg man is 0.36 mg/day. The theoretical maximal residue contribution (TMRC) of all the herbicide's tolerances does not exceed the MPI. An oncogenicity study in a second species is missing. However, it is concluded that the study is not absolutely essential for assessing the potential hazard for purposes of setting the proposed tolerances since the oncogenic potential of the herbicide was determined in the rat (negative), and it has been determined that there is no indication of the presence of any real residue of the herbicide in wheat grain. The potential exposure and consequent risk for the general population consuming wheat, therefore, is virtually nil.

In its letter of June 8, 1978, the company agreed to perform a second carcinogenicity study, to delete this use from the label should the second carcinogenicity study exceed the risk criteria for chronic toxicity in 40 CFR 163.11, and to repeat the teratology study. There are no regulatory actions against the continued registration of the herbicide, nor are other considerations involved in establishing the tolerances. The pesticide is considered useful for the purpose for which tolerances are sought.

There is no reasonable expectation of residues in eggs, meat, milk, or poultry, as delineated in 40 CFR 180.6(a)(3). An adequate analytical method (gas liquid chromatography using an alkali flame ionization detector) is available for enforcement purposes. Tolerances have previously been established for residues of the herbicide at 0.2 ppm in or on corn fodder and forage and at 0.05 ppm (negligible residue) in or on fresh corn including sweet corn (kernels plus cob with husk removed); corn grain; cottonseed; and sorghum fodder, forage, and grain.

Any person who has registered, or submitted an application for the registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act which contains any of the ingredients listed herein may request, by August 14, 1978, that this rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear a notation indicating both the subject and the petition/document control number, "PP6F1729/P58". All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Office of the Federal Register from 8:30 a.m. to 4 p.m. Monday through Friday.

(Section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)).)

Dated: July 6, 1978.

MARTIN H. ROGOFF,
Acting Director,
Registration Division.

It is proposed that Part 180, subpart C, § 180.307 be revised in its entirety by editorially reformatting the section into an alphabetized columnar listing, deleting the term "negligible residue," and alphabetically inserting tolerances of 0.1 ppm in or on wheat grain, wheat straw, and green wheat forage, as follows:

§ 180.307 2 - [[4 - Chloro - 6 - (ethylamino) - s - triazin - 2 - yl]amino] - 2 -methylpropionitrile; tolerances for residues.

Tolerances are established for residues of the herbicide 2-[[4-chloro-6-(ethylamino)-*s*-triazin-2-yl] amino]-2-methylpropionitrile in or on the following raw agricultural commodities:

Commodity	Parts per million
Corn, fodder	0.2
Corn, forage	0.2
Corn, fresh (inc sweet K+CWHR)	0.05
Corn, grain	0.05
Cottonseed	0.05
Sorghum, fodder	0.05
Sorghum, forage	0.05
Sorghum, grain	0.05
Wheat, forage (green)	0.1
Wheat, grain	0.1
Wheat, straw	0.1

[FR Doc. 78-19406 Filed 7-13-78; 8:45 am]

[6560-01]

[40 CFR Part 50]

[FRL 927-4; Docket No. OAQPS 78-8]

PROPOSED REVISION OF THE NATIONAL AMBIENT AIR QUALITY STANDARD FOR PHOTOCHEMICAL OXIDANTS

Expanded Meeting Schedule and Extension of Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Additional meetings and extension of comment period.

SUMMARY: On June 22, 1978, the Environmental Protection Agency proposed in the FEDERAL REGISTER (43 FR 26962) revisions to the National Ambient Air Quality Standard for photochemical oxidants. Also announced in that notice was a public hearing on July 18, 1978, to receive public comments on the proposed revisions to the standard. EPA has decided to expand the meeting schedule to include two additional geographic sites. All hearings will begin at 9 a.m. with an additional meeting scheduled for 7:30 p.m. in Los Angeles. The comment period has also been extended from August 18, 1978, to September 24, 1978.

DATES: Comments are due on or before September 24, 1978. Hearings will be held on July 18, 1978, in Washington, D.C., on August 17, 1978, in Atlanta, Ga., on August 22, 1978, in Dallas, Tex., and on August 24, 1978, in Los Angeles, Calif.

ADDRESS: Send comments to Mr. Joseph Padgett (MD-12), Director, Strategies and Air Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711.

The hearings will be held at the following locations:

Washington Hearing: Environmental Protection Agency, 401 M Street SW., Room 2117, Washington, D.C.

Atlanta Hearing: Civic Center, 395

Piedmont Avenue NE., Atlanta, Ga. 30308.

Dallas Hearing: Environmental Protection Agency, Region VI, First International Building, 29th Floor, Conference Room, 1201 Elm Street, Dallas, Tex. 75720.

Los Angeles Hearing: Location not yet determined. For further details contact Ms. Lorraine Pearson, telephone 415-556-0102.

FOR FURTHER INFORMATION CONTACT:

Mr. Joseph Padgett, telephone 919-541-5204 (FTS 629-5204).

Dated: July 7, 1978.

Approved:

DAVID G. HAWKINS,
Assistant Administrator for Air and Waste Management.

[FR Doc. 78-19427 Filed 7-13-78; 8:45 am]

[4910-62]

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[49 CFR Part 27]

[OST Docket No. 56; Notice No. 78-61]

NONDISCRIMINATION ON THE BASIS OF HANDICAP IN FEDERALLY ASSISTED PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

Public Hearings

AGENCY: Department of Transportation.

ACTION: Notice of rescheduling of public hearing, scheduling of other public hearings, and extension of comment closing date.

SUMMARY: This notice establishes four additional public hearings and reschedules the Washington, D.C., hearing previously scheduled for July 26, 1978, concerning the Department of Transportation proposed regulation for implementing section 504 of the Rehabilitation Act of 1973. It also extends the comment closing date from September 6, 1978, to October 20, 1978. This action is in response to requests for additional hearings and for further time to comment on the proposed regulation. It will provide greater opportunity for public participation in the development of the final rule.

COMMENT CLOSING DATE: October 20, 1978.

FOR FURTHER INFORMATION CONTACT:

Richard Clark, Regulation and Enforcement, Office of the General Counsel, U.S. Department of Transportation, Washington, D.C. 20590, 202-426-4723.

SUPPLEMENTARY INFORMATION: On Thursday, June 8, 1978, the Department of Transportation (Department) published in the FEDERAL REGISTER (43 FR 25016) a notice of proposed rulemaking (NPRM) to implement section 504 of the Rehabilitation Act of 1973. The preamble to that NPRM set a public hearing on the matter in Washington, D.C., to begin on July 26, 1978, and a public comment closing date of September 6, 1978.

The Department has received requests from the American Public Transit Association, the National Association of Counties, the U.S. Conference of Mayors, National Association of Regional Councils, and the National League of Cities asking that: (1) The Washington, D.C., hearing be rescheduled, (2) the comment period, which was scheduled to close September 6, 1978, be extended 90 days, and (3) a series of public hearings be conducted in other cities in addition to Washington, D.C.

Representatives of the Transbus Group and its member American Coalition of Citizens with Disabilities have advised the Department that they too favor additional hearings, that they do not object to the rescheduling of the Washington, D.C., hearing, but that they do not support the time extension.

The Department has determined that public hearings in other cities in addition to Washington, D.C., will afford more opportunity for the public to participate in the development of this rulemaking. In particular, the holding of public hearings in other cities may make it possible for more individuals or groups to provide the Department with valuable information and comments which might not otherwise be available.

For that reason, the Department has decided to hold public hearings in San Francisco, Calif.; Denver, Colo.; Chicago, Ill.; and New York, N.Y., in addition to Washington, D.C. The Department has also decided that the Washington, D.C., hearing should be rescheduled to provide more time for preparation and to allow it to be scheduled in the same time period as the newly planned hearings. The Department is planning to hold these hearings during the first part of September. This will provide the time necessary to set up these hearings. It will also allow the attendees, who may have difficulty in adjusting their schedules on short notice during the summer vacation period, to make necessary plans. To allow a reasonable amount of time to file comments following the public hearings, the Department has also decided to extend the comment closing date until October 20, 1978.

The Department believes that additional hearings and the accompanying extension of the public comment closing date will not unduly delay any final action which the Department may take in this matter.

Accordingly, this notice postpones the Washington, D.C., hearing date to September 1978 at a specific location and date to be set by a later notice in the FEDERAL REGISTER. By this later notice, the Department also will announce the specific dates and locations of the other public hearings, and changes, if any, to the availability and allocation of travel and per diem money for those wishing to testify. This notice also extends the public comment closing date until October 20, 1978.

Issued in Washington, D.C., on July 10, 1978.

BROCK ADAMS,
Secretary.

[FR Doc. 78-19362 Filed 7-13-78; 8:45 am]

[4310-55]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 17]

ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Proposed Listing and Critical Habitat Determination for a Fish and a Salamander

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine the San Marcos gambusia (*Gambusia georgei*) to be an endangered species and the San Marcos salamander (*Eurycea nana*) to be a threatened species. Critical habitat is proposed for both species. This action is being taken because of their decreased population levels and projected modification of their habitat. The proposed action, if finalized, would protect the populations of the fish and salamander and their habitat. Neither species is known to exist outside San Marcos Spring in Hays County, Tex.

DATES: Comments from the public must be received by September 15, 1978. Comments from the Governor of Texas must be received by October 15, 1978.

ADDRESSES: Submit comments to Director (OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments and materials received will be available for public inspection during normal business hours at the Service's Office of Endangered Species, Suite 1100, 1612 K Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Mr. Keith M. Schreiner, Associate

Director—Federal Assistance, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 202-343-4646.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 4(a) of the Endangered Species Act of 1973 (16 U.S.C. 1529 et seq.) states:

General.—(1) The Secretary shall by regulation determine whether any species is an endangered species or a threatened species because of any of the following factors:
(1) The present or threatened destruction, modification, or curtailment of its habitat or range;
(2) Overutilization for commercial, sporting, scientific, or educational purposes;
(3) Disease or predation;
(4) The inadequacy of existing regulatory mechanisms; or
(5) Other natural or manmade factors affecting its continued existence.

This authority has been delegated to the Director.

On August 2, 1977, the Fish and Wildlife Service published a notice in the FEDERAL REGISTER (42 FR 39119–39120) to the effect that a review of the status of 10 amphibians was being conducted. The San Marcos salamander (*Eurycea nana*) was included as part of the review. As a result of the notice of review, responses were received from the State of Texas and professional biologists. The comments and supportive documents have been reviewed and a summary is presented below. This information has been considered and is incorporated into the administrative record of this proposal.

Mr. Henry Burkett, Executive Director of the Taxas Parks and Wildlife Department, responded for the State of Texas. He recommended the listing of the San Marcos salamander on the U.S. list of endangered and threatened wildlife and plants as threatened and recommended Critical habitat to include aquatic habitat from the head of Spring Lake downstream some 2.5 river miles to the county road bridge on the San Marcos River about 0.5 mile downstream from Interstate Highway 35. Mr. Burkett included a brief review of the status of this species prepared by biologists of the Texas Parks and Wildlife Department with his comments. All four biologists that commented on the status of *E. nana* recommended Federal protection; threatened status was felt to most accurately reflect the biological status of the species. While the salamander population is presently large, the threat of lowered water tables in the San Marcos area could jeopardize the species. Several biologists recommended the inclusion of Spring Lake as critical habitat.

SUMMARY OF FACTORS AFFECTING THE SPECIES

These findings are summarized herein under each of the five criteria of section 4(a) of the act. These factors, and their application to the San Marcos Gambusia and San Marcos salamander, are as follows:

SAN MARCOS GAMBUSIA

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The San Marcos gambusia (*Gambusia georgei*) is known only from San Marcos Spring and the upper portion of its outflow, the San Marcos River. Within the spring and its outflow, it is restricted to the shallow areas with slow flow without dense aquatic vegetation. The bottom is typically mud. The water temperature in this habitat is fairly constant at 21–22° C.

The San Marcos gambusia population was estimated by Drs. Clark Hubbs and Alex Peden to be fewer than 1,000 individuals in 1969. A survey of the area in 1974 revealed the presence of one individual. Additional surveys in 1976 failed to find any San Marcos gambusia. There are two other species of gambusia (*Gambusia affinis* and *Gambusia geiseri*) which occur in the same area, and these are still abundant.

Biologists who described the species indicated that "a slight alteration of the river channel could easily exterminate *Gambusia georgei.*" Some biologists believe the species may be extinct. While it is not known precisely what resulted in the decline, it is believed by biologists familiar with the area to be habitat related. One possible factor contributing to the decline was the severe flooding of the San Marcos River in May 1970. The future of the habitat of this species is threatened by reduced flows in San Marcos Spring. Flow projections for San Marcos Spring indicate that it may be intermittent by 1985.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* Not applicable.

3. *Disease or predation.* This factor is not known to affect the present status of this species.

4. *The inadequacy of existing regulatory mechanisms.* Not applicable.

5. *Other natural or manmade factors affecting its continued existence.* None.

SAN MARCOS SALAMANDER

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The San Marcos salamander is known only from Spring Lake and the upper San Marcos River in southcentral Texas; most of the population is actually restricted to algal mats in a small area within the lake itself. The population is rather large and stable. However, the future of the habitat is threatened by reducing spring flow (because of ground water pumping in the aquifer adjacent to and above the Spring Lake region); it is projected that the spring may become intermittent by 1985. Continued removal of ground water in this area could severely affect the habitat of the San Marcos salamander within its limited range and lead to the salamander's eventual extinction.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* Not applicable.

3. *Disease or predation.* This factor is not known to affect the present status of this species.

4. *The inadequacy of existing regulatory mechanisms.* Not applicable.

5. *Other natural or manmade factors affecting its continued existence.* None.

CRITICAL HABITAT

Section 7 of the act, entitled "Interagency Cooperation," states:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

A definition of the term "critical habitat" was published by the Fish and Wildlife Service and the National Marine Fisheries Service in the FEDERAL REGISTER of January 4, 1978 (43 FR 870–876), and is reprinted below:

"Critical habitat" means any air, land, or water area (exclusive of those existing manmade structures or settlements which are not necessary to the survival and recovery of a listed species) and constituent elements thereof, the loss of which would appreciably decrease the likelihood of the survival and recovery of a listed species or a distinct segment of its population. The constituent elements of critical habitat include, but are not limited to: Physical structures and topography, biota, climate, human activity, and the quality and chemical content of land, water, and air. Critical habitat may represent any portion of the present habitat of a listed species and may include additional areas for reasonable population expansion.

There has been widespread and erroneous belief that a critical habitat designation is something akin to establishment of a wilderness area or wildlife refuge, and automatically closes an area to most human uses. Actually, a critical habitat designation applies only to Federal agencies, and essentially is an official notification to these agencies that their responsibil-

ities pursuant to section 7 of the act are applicable in a certain area.

A critical habitat designation must be based solely on biological factors. There may be questions of whether and how much habitat is critical, in accordance with the above interpretation, or how to best legally delineate this habitat, but any resultant designation must correspond with the best available biological data. It would not be in accordance with the law to involve other motives; for example, to enlarge a critical habitat delineation so as to cover additional habitat under section 7 provisions, or to reduce a delineation so that actions in the omitted area would not be subject to evaluation.

There may indeed be legitimate questions of whether, and to what extent, certain kinds of actions would adversely affect listed species. These questions, however, are not relevant to the biological basis of critical habitat delineations. Such questions should, and can more conveniently, be dealt with after critical habitat has been designated. In this respect, provisions for interagency cooperation were published on January 4, 1978, in the FEDERAL REGISTER (43 FR 870-876) to assist Federal agencies in complying with their responsibilities under section 7 of the Endangered Species Act of 1973.

As specified in the regulations for interagency cooperation, as published in the January 4, 1978, FEDERAL REGISTER (43 FR 870), the Director will consider the physiological, behavioral, ecological, and evolutionary requirements for survival and recovery of listed species in determining what areas or parts of habitat are critical. These requirements include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing of offspring; and generally,

(5) Habitats that are protected from disturbances or are representative of the geographical distribution of listed species.

These requirements and their application to these two species for which critical habitat is being proposed within this rulemaking are as follows.

SAN MARCOS GAMBUSIA

The San Marcos Spring and its outflow which are proposed as critical habitat include sufficient area for growth and dispersal of individuals and the population of San Marcos gambusia. Shallow areas without aquatic vegetation along the margin of the spring provide proper water conditions which fulfill basic physiological requirements. Although the food items of this species are not specifically known, since the species occurs only in the proposed area, it is reasonable to believe the food and other nutritional requirements of the species are fulfilled within this area. The proposed area, the only known habitat of this species, is representative of the geographical distribution of the San Marcos gambusia.

SAN MARCOS SALAMANDER

With respect to the San Marcos salamander, the area proposed as critical habitat satisfies all known criteria for the evolutionary, ecological, behavioral, and physiological requirements of the species. Dense algal mats cover the substrate and it is within this vegetation that the salamander finds cover and protection from fish and other predators. Tendiped larvae and amphipods are the main food items of the salamander and these prey are found abundantly within the bottom vegetation. While courtship of the salamander has not been described and eggs have not been found, hatchlings have; coupled with the relatively large population size, successful reproduction is apparently occurring. The area proposed as critical habitat includes the entire known range of the species.

The areas included in this proposed rule as proposed critical habitat for these species provide the above requirements for these species. If, during the public comment period, new information is made available, these areas proposed as critical for the continued existence of these species may be modified to more accurately reflect the physiological, behavioral, ecological, and evolutionary requirements of these species.

It should also be pointed out that the areas delineated do not necessarily include the entire critical habitat of these species and modifications of their critical habitat designations may be proposed in the future. In accordance with section 7 of the act, all Federal departments and agencies would be required to insure that actions authorized, funded, or carried out by them would not result in the destruction or adverse modification of the critical habitat of the San Marcos gambusia and San Marcos salamander.

All Federal departments and agencies shall, in accordance with section 7 of the act, consult with the Secretary of the Interior with respect to any action which is considered likely to affect critical habitat. Consultation pursuant to section 7 should be carried out using the procedures contained in the January 4, 1978, FEDERAL REGISTER (43 FR 870-876).

EFFECT OF THE RULEMAKING

In addition to the effects discussed above, the effects of this rulemaking would include, but not necessarily be limited to, those mentioned below.

The act and implementing regulations published in 50 CFR Part 17 already set forth a series of general prohibitions and exceptions which apply to all endangered species. All of these prohibitions and exceptions also apply to any threatened species unless a special rule pertaining to that threatened species has been published and indicates otherwise.

With respect to the San Marcos gambusia and San Marcos salamander, all prohibitions of section 9(a)(1) of the act, as implemented by 50 CFR 17.21 and 17.31, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale either species in interstate or foreign commerce. It would also be illegal to possess, sell, deliver, carry, transport, or ship the animals if they had been taken illegally. Certain exceptions would apply to agents of the Service and State conservation agencies.

The act and 50 CFR Part 17 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened species under certain circumstances. Such permits are available for scientific purposes or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not available.

Pursuant to section 4(b) of the act, the Director will notify the Governor of Texas with respect to this proposal and request his comments and recommendations before making final determinations.

PUBLIC COMMENTS SOLICITED

The Director intends that the rules finally adopted will be as accurate and effective as possible in the conservation of any endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned govermental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological or other relevant data concerning any threat (or the lack thereof) to these species;

(2) The location of and reasons why any habitat of these species should or should not be determined to be critical habitat as provided for by section 7 of the act;

(3) Additional information concerning the range and distribution of either species.

Final promulgation of the regulations on the San Marcos gambusia and San Marcos salamander will take into consideration the comments and any additional information received by the Director and such communications may lead him to adopt final regulations that differ from this proposal.

An environmental assessment has been prepared inconjunction with this proposal. It is on file in the Service's Office of Endangered Species, 1612 K Street NW., Washington, D.C., and may be examined during regular business hours. A determination will be made at the time of final rulemaking as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

The primary authors of this proposed rulemaking are Dr. C. Kenneth Dodd, Jr., and Dr. James D. Williams, Office of Endangered Species, 202-343-7814.

REGULATIONS PROMULGATION

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. It is proposed to amend § 17.11 by adding, in alphabetical order, the following to the list of animals:

§ 17.11 Endangered and threatened wildlife.

Species			Range				
Common name	Scientific name	Population	Known distribution	Portion endangered	Status	When listed	Special rules
Amphibians:							
• • •	•	•	•	•			
Salamander, San Marcos	*Eurycea nana*	NA	U.S.A. (Texas)	Entire	T		17.43(a)
• • •	•	•	•	•			
Fishes:							
• • •	•	•	•	•			
Gambusia, San Marcos	*Gambusia georgei*	NA	U.S.A. (Texas)	Entire	E		NA
• • •	•	•	•	•			

2. The Service also proposes to amend § 17.43 by adding a new paragraph (a) as follows:

§ 17.43 Special rules—amphibians.

• • • • •

(a) San Marcos salamander (*Eurycea nana*).

(1) All provisions of § 17.31 apply to this species, except that it may be taken in accordance with applicable State law.

(2) Any violation of State law will also be a violation of the act.

§ 17.95 [Amended]

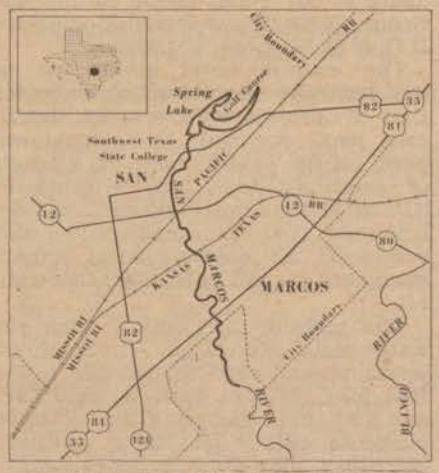
3. Finally, the Service proposes to amend § 17.95(d) by adding in the manner set forth below, critical habitat for the San Marcos salamander after that designated for the Santa Cruz long-toed salamander.

(d) Amphibians.

• • • • •

SAN MARCOS SALAMANDER (*Eurycea nana*)

Texas. Hays County. San Marcos Spring Lake and its outflow, the San Marcos River, downstream to the county road crossing approximately 0.5 mile below Interstate Highway 35 bridge.



4. Also, the Service proposes to amend § 17.95(e) by adding critical habitat of the San Marcos gambusia after that of the Alabama cavefish as follows:

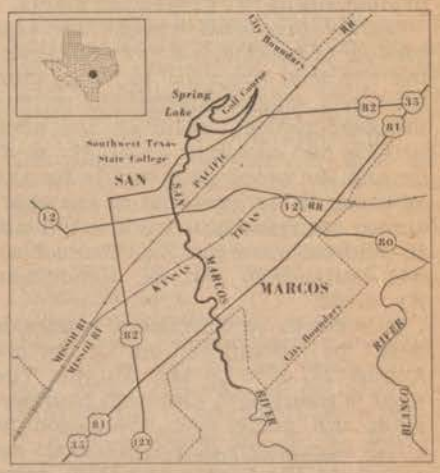
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(e) Fishes.

• • • • •

SAN MARCOS GAMBUSIA (*Gambusia georgei*)

Texas. Hays County. San Marcos Spring Lake and its outflow, the San Marcos River, downstream to the county road crossing approximately 0.5 mile below Interstate Highway 35 bridge.



NOTE.—The Service has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11949 and OMB Circular A-107.

Date: July 7, 1978.

ROBERT S. COOK,
Acting Director,
Fish and Wildlife Service.

[FR Doc. 78-19402 Filed 7-13-78; 8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[3410-15]

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

BIG RIVERS ELECTRIC CORP., HENDERSON, KY.

Proposed Loan Guarantee

Under the authority of Pub. L. 93-32 (87 Stat. 65) and in conformance with applicable agency policies and procedures as set forth in REA bulletin 20-22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $40,064,000 to Big Rivers Electric Corp. ("Big Rivers") of Henderson, Ky. These loan funds will be used to finance the construction of 38 miles of 69 kV transmission line, 75 miles of 161 kV transmission line, related transmission facilities, additional funds to complete transmission and generation projects, and capital improvements at two generating plants.

Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed project, including the engineering and economic feasibility studies and the proposed schedule for the advances to the borrower of the guaranteed loan funds from Mr. William H. Thorpe, Manager, Big Rivers Electric Corp., P.O. Box 24, Henderson, Ky. 42420.

In order to be considered, proposals must be submitted on or before August 14, 1978 to Mr. Thorpe. The right is reserved to give such consideration and make such evaluation or other disposition of all proposals received, as Big Rivers and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA bulletin 20-22 are available from the Director, Information Services Division, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

Dated at Washington, D.C., this 6th day of July 1978.

DAVID A. HAMIL,
Administrator, Rural Electrification Administration.

[FR Doc. 78-19263 Filed 7-13-78; 8:45 am]

[3410-16]

Soil Conservation Service

CEDAR CREEK WATER-BASED RECREATION R.C. & D. MEASURE, FLORIDA

Intent Not to Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Cedar Creek Water-Based Recreation R.C. & D. Measure, California.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. William E. Austin, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for water-based recreation. The planned works of improvement include a 950 foot long, 34 foot high earthen dam and a 53-acre reservoir. Other planned elements include picnicking facilities, campsites, play areas, beaches, nature trails, boat ramp, service dock, and restrooms with septic tanks and absorption fields. Also, approximately 3,680 feet of paved access road and two paved parking areas will be constructed.

The notice of intent not to prepare an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. William E. Austin, State Conservationist, Soil Conservation Service, Federal Building, P.O. Box 1208, Gainesville, Florida 32602, 904-377-8732. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until August 14, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Public Law 87-703, 16 U.S.C. 590a-f, q.).

JOSEPH W. HAAS,
Assistant Administrator for Water Resources, Soil Conservation Service.

[FR Doc. 78-19470 Filed 7-13-78; 8:45 am]

[3410-16]

DE-GO-LA R.C. & D. AREA CRITICAL AREA TREATMENT R.C. & D. MEASURES, TEXAS

Intent Not to Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the De-Go-La R.C. & D. Area Critical Area Treatment R.C. & D. Measures in Calhoun, De Witt, Goliad, Gonzales, Jackson, Lavaca, and Victoria Counties.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. George C. Marks, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for critical area treatment. The planned works of improvement include small grade stabilization structures, diversions, critical area plantings, debris basins, fencing, grassed waterways, and other small grade control structures such as placed rock riprap and reinforced concrete weirs. It is estimated that about 3,150 acres of seriously eroding areas along public roads, on

public lands, and on privately owned agricultural lands where damage occurs will be treated by installation of these measures.

The notice of intent not to prepare an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. George C. Marks, State Conservationist, Soil Conservation Service, W. R. Poage Federal Building, 101 South Main Street, P.O. Box 648, Temple, Tex. 76501, Phone 817-774-1214. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until August 14, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87-703, 16 U.S.C. 590a-f, q.).

Dated: July 6, 1978.

JOSEPH W. HAAS,
Assistant Administrator for Water Resources, Soil Conservation Service.

[FR Doc. 78-19471 Filed 7-13-78; 8:45 am]

[3410-16]

GEORGE STEVENS ACADEMY CRITICAL AREA TREATMENT MEASURE, MAINE

Intent Not to Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environnmental impact statement is not being prepared for the George Stevens Academy Critical Area Treatment R.C. & D. Measure, Hancock County, Maine.

The environmental assesssment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Warwick M. Tinsley, Jr., State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for erosion control on the school site. The planned works of improvement include an asphalt diversion, catch basins, a vegetated diversion, and vegetative stabilization of disturbed areas.

The notice of intent not to prepare an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Warwick M. Tinsley, Jr., State Conservationist, Soil Conservation Service, USDA Building, University of Maine, Orono, Maine 04473, 207-866-2132. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until August 14, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87-703, 16 U.S.C. 590a-f, q.).

Dated: July 6, 1978.

JOSEPH W. HAAS,
Assistant Administrator for Water Resources, Soil Conservation Service.

[FR Doc. 78-19472 Filed 7-13-78; 8:45 am]

[3410-16]

HARRISON COUNTY FAIRGROUNDS LAND DRAINAGE R.C. & D. MEASURE, IND.

Intent Not To Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Harrison County Fairgrounds Land Drainage R.C. & D. Measure, Ind.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Buell M. Ferguson, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for land drainage. The planned works of improvement include 3,850 feet of subsurface drains, 300 feet of drainage field ditches, 11 surface inlets, 3 acres of land smoothing, 3 acres of critical area planting, 400 feet of diversions, 1.3 acres of grassed waterways, and 3 grade stabilization structures.

The notice of intent not to prepare an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Buell M. Ferguson, State Conservationist, Soil Conservation Service, Atkinson Square-West, suite 2200, 5610 Crawfordsville Road, Indianapolis, Ind. 46224, phone 317-269-6515. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until August 14, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87-703, 16 U.S.C. 590a-f, q.)

Dated: July 6, 1978.

JOSEPH W. HAAS,
Assistant Administrator for Water Resources, Soil Conservation Service.

[FR Doc. 78-19473 Filed 7-13-78; 8:45 am]

[3410-16]

LAKE VAN PUBLIC WATER-BASED RECREATION R.C. & D. MEASURE, N. MEX.

Intent Not to Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Lake Van Public Water-Based Recreation R.C. & D. Measure, Chaves County, N. Mex.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. A. W. Hamelstrom, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for addition and improvement of recreation facilities at Lake Van, an existing water-based recreation area located at and owned by the village of Dexter, N. Mex. The planned works of improvement include recreation vehicle sites, group shelter, picnic units and fishing piers.

The notice of intent not to prepare an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. A. W. Hamelstrom, State Conservationist, Soil Conservation Service, 517 Gold Avenue SW., Albuquerque, N. Mex. 87103, 505-766-3277. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until August 14, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87-703, 16 U.S.C. 590A-f, q.)

Dated: July 6, 1978.

JOSEPH W. HAAS,
Assistant Administrator for Water Resources, Soil Conservation Service.

[FR Doc. 78-19474 Filed 7-13-78; 8:45 am]
0Pi128°

[3410-16]

MON VIEW PARK LAND DRAINAGE R.C. & D. MEASURE, PA.

Intent Not to Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Mon View Park Land Drainage R.C. & D. Measure, Greene County, Pa.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Graham T. Munkittrick, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for land drainage. The planned works of improvement include approximately 1,320 feet of subsurface drainage pipe, two surface water inlets, a junction box for the drainage lines, and a 20-foot long steel outlet pipe. The steel pipe will outlet on the Monongahela Riverbank which will be protected by rock riprap. Limited grading will be done to insure positive flow to the inlets. All vegetative cover disturbed will be revegetated.

The notice of intent not to prepare an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Graham T. Munkittrick, State Conservationist, Soil Conservation Service, 228 Walnut Street, Harrisburg, Pa. 17108, 717-782-2202. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until August 14, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87-703, 16 U.S.C. 590a-f, q.).

JOSEPH W. HAAS,
Assistant Administrator for Water Resources, Soil Conservation Service.

[FR Doc. 78-19475 Filed 7-13-78; 8:45 am]

[3410-16]

SILVA FLAT CRITICAL AREA TREATMENT MEASURE, CALIF.

Intent Not to Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Silva Flat R.C. & D. Measure, Lassen County, Calif.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Francis C. H. Lum, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for the elimination of an actively eroding gully. The present size of the gully is about 800 feet long, 11 feet wide, and 12 feet deep. The planned works of improvement include the installation of 600 feet of corrugated metal pipe, two concrete headwalls, one trash guard, and one energy dissipater. All disturbed areas will be vegetated. Fencing will be installed to protect against grazing by domestic livestock. The location of the proposed measure is in the most northerly portion of the southwest quarter of section 22, T38N, R8E, Beiber Quad.

The notice of intent not to prepare an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Francis C. H. Lum, State Conservationist, Soil Conservation Service, 2828 Chiles Road, Davis, Calif. 95616, phone 916-758-2200. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until August 14, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87-703, 16 U.S.C. 590a-f, q.)

Dated: July 6, 1978.

JOSEPH W. HAAS,
Assistant Administrator for Water Resources, Soil Conservation Service.

[FR Doc. 78-19477 Filed 7-13-78; 8:45 am]

[3410-16]

SUSAN RIVER GREENBELT CRITICAL AREA TREATMENT R.C. & D. MEASURE, CALIF.

Intent Not to Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Susan River Greenbelt Critical Area Treatment and Recreation R.C. & D. Measure, Lassen County, Calif.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Francis C. H. Lum, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for streambank stabilization and recreation development adjacent to the

Susan River within the city of Susanville, Calif. The planned works of improvement include erosion control at critically eroding areas along 7,440 feet of streambank and recreation development adjacent to the river. Rock rip-rap will be used at four sites for a total of about 1,742 feet. Recreation development will include bike and foot trails, picnic facilities, outdoor classroom and wildlife habitat improvement. Some fencing will be required to protect fragile areas from concentrated human activities. This work will be performed in phases over a 4-year period beginning in 1978.

The notice of intent not to prepare an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Francis C. H. Lum, State Conservationist, Soil Conservation Service, 2828 Chiles Road, Davis, Calif. 95616, 916-758-2200. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until August 14, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87-703, 16 U.S.C. 590a-f, g.).

Dated: July 6, 1978.

JOSEPH W. HAAS,
Assistant Administrator for Water Resources Soil, Conservation Service.

[FR Doc. 78-19476 Filed 7-13-78; 8:45 am]

[6320-01]

CIVIL AERONAUTICS BOARD

[Dockets No. 30233, 30339, 32145, and 32151]

APPLICATIONS OF NORTHWEST AIRLINES, BRANIFF AIRWAYS, EASTERN AIRLINES, AND UNITED AIRLINES SUBPART N PROCEEDING (NONSTOP AUTHORITY BETWEEN SEATTLE AND ATLANTA/FLORIDA)

Notice of Hearing

The hearing herein will commence on September 26, 1978, at 10 a.m. and will be held in room 1003, hearing room C, Universal Building North, 1875 Connecticut Avenue NW., Washington, D.C.

Dated at Washington, D.C., July 10, 1978.

RUDOLF SOBERNHEIM,
Administrative Law Judge.

[FR Doc. 78-19461 Filed 7-13-78; 8:45 am]

[6320-01]

[Order 78-7-16; Docket No. 32610]

BELIZE AIRWAYS LTD.

Application for Amendment of Foreign Air Carrier Permit; Statement of Tentative Findings and Conclusions and Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 7th day of July 1978.

By application filed May 5, 1978, Belize Airways Ltd. requests amendment of its foreign air carrier permit[1] to include authority under the Air Services Agreement (Bermuda II) between the Governments of the United States and the United Kingdom effective July 23, 1977. Its current operating permit authorizes (1) foreign air transportation of persons, property, and mail between a point or points in Belize and the terminal point Miami, Fla., and (2) charter trips in foreign air transportation subject to the terms, conditions, and limitations prescribed by part 212 of the Board's Economic Regulations.

The proposed amendment would allow Belize to serve two of six U.S. terminal points for which it has been designated by the United Kingdom on United Kingdom Routes 9 and 16,[2] i.e., Baltimore, Md., Houston, Tex., Miami, Fla., New Orleans, La., Tampa, Fla., or Washington, D.C.,[3] and to exercise fully the ancillary rights set forth in section 5 of annex 1 to Bermuda II, as amended.

Belize Airways also seeks a waiver from the requirements of part 312 of the Board's procedural regulations because the proposed operating authority is provided in a duly executed Air Services Agreement of the United States, and the net environmental impact is de minimis.

Belize Airways states that it is a corporation of Belize and subject to its laws; that it is a citizen of Belize, a self-governing territory (formerly British Honduras) affiliated with the United Kingdom; that there has been no change in its ownership and control since the time the original permit was issued; and that it is fit, willing, and able to perform the air transportation which would be authorized by the amended permit.

An answer in support of Belize Airways' application was filed by the city of New Orleans.[4]

Belize Airways was granted a 2-year experimental permit, although it was not substantially owned and effectively controlled by citizens of Belize and planned to rely on traffic moving between Miami and points beyond Belize, principally San Salvador. The Board emphasized, however, that it would carefully scrutinize the carrier's performance at permit renewal time to determine if progress toward a bonafide transfer or substantial ownership and control to the citizens or Government of Belize had been made, and lessened dependence on beyond homeland traffic achieved. The expanded authority applied for will expire at the same time as the original permit. The carrier's entire authority will be subject to reevaluation in light of the problems noted in order 77-8-63. We see no need to address those issues at this time.

In view of the foregoing and all the facts of record, the Board tentatively finds and concludes:

1. That it is in the public interest to amend the foreign air carrier permit issued to Belize Airways Ltd.;

2. That Belize Airways Ltd. is fit, willing, and able properly to perform the transportation described in the specimen permit, and to conform to the provisions of the Federal Aviation Act of 1958, as amended, and the rules, regulations, and requirements of the Board;

3. That the public interest requires that the exercise of the privileges granted by the amended permit shall be subject to the terms, conditions, and limitations contained in the specimen permit attached to this order, to the condition that the holder shall file quarterly statistical reports showing separately for each city-pair, the origin and destination of its total revenue passengers as shown on pertinent tickets or combinations of tickets, and to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board;

4. That the public interest does not require an oral hearing on the application;

5. That the amendment of Belize Airways Ltd.'s foreign air carrier permit would not constitute a "major Federal action significantly affecting the quality of the human environment" within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) and will not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975 (EPCA), as

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[1] Order 77-8-63, effective August 16, 1977, for 2 years.

[2] Sections 3 and 4 of annex 1: United Kingdom Route 9, Caribbean Combination Air Service; United Kingdom Route 16, Caribbean All-Cargo Air Service.

[3] The holder may not during a traffic season serve more than two of the six above-named U.S. terminal points, but may, at its discretion, and, upon not less than 90 days notice, change from one of these points to another during each traffic season.

[4] Servicio Aereo de Honduras, S.A. (SAHSA) and Transportes Aereos Nacionales, S.A. (TAN) filed petitions to intervene. Since the Board's rules of practice do not provide for intervention in matters handled by show cause procedures [14 CFR 302.15(a)], we will will defer ruling on the petitions to intervene.

defined in subsection 313.4(a)(1) of the Board's regulations; [5]

6. That a waiver of part 312 of the Board's procedural regulations should be granted; and

7. That except to the extent granted, the application of Belize Airways Ltd. in docket 32610 should be denied.

It is therefore ordered that:

1. All interested persons are directed to show cause why the Board should not (1) make final its tentative findings and conclusions, and (2) issue an amended foreign air carrier permit to Belize Airways Ltd. in the specimen form attached, subject to the approval of the President;

2. Any interested person having objection to the issuance of an order making final its tentative findings and conclusions and issuing the proposed amended foreign air carrier permit shall, within 21 days after the date of service of this order, file with the Board and serve on the persons named in paragraph 6 a statement of objections specifying the part or parts objected to, including a summary of testimony, statistical data, and concrete evidence to be relied upon in support of the objections. If an oral hearing is requested, the objector should state in detail why such hearing is considered necessary and what relevant and material facts he would expect to establish through such hearing which cannot be established in written pleadings;

3. If timely and properly supported objections are filed, further consideration will be accorded the matters and issues raised by the objections before further action is taken by the Board; *Provided*, That the Board may proceed to enter an order in accordance with its tentative findings and conclusions set forth in the order if it determines that there are no factual issues present that warrant the holding of an oral evidentiary hearing; [6]

4. In the event no objections are filed, all further procedural steps will be deemed to have been waived and the Secretary shall enter an order which (1) shall make final the Board's tentative findings and conclusions set forth in this order, and (2) shall issue an amended foreign air carrier permit to the applicant, subject to the approval of the President, in the specimen form attached; and

5. The petitions to intervene of Servicio Aereo de Honduras, S.A. and Transportes Aereos Nacionales, S.A. be deferred.

6. This order shall be served upon Belize Airways Ltd., the Ambassador of Great Britain and Northern Ireland in Washington, D.C., Servicio Aereo de Honduras, S.A., Transportes Aereos Nacionales, S.A., and the Departments of State and Transportation.

This order will be published in the FEDERAL REGISTER and transmitted to the President.

By the Civil Aeronautics Board. [7]

PHYLLIS T. KAYLOR,
Secretary.

SPECIMEN PERMIT

PERMIT TO FOREIGN AIR CARRIER (AS AMENDED)

Belize Airways Ltd. is authorized, subject to the provisions set forth, the provisions of the Federal Aviation Act of 1958, and the orders, rules, and regulations of the Board, to engage in foreign air transportation with respect to persons, property, and mail, as follows: Between a point or points in Belize and the coterminal points Baltimore, Md., Houston, Tex., Miami Fla., New Orleans, La., Tampa, Fla., and Washington, D.C.

The holder shall be authorized to engage in charter trips in foreign air transportation, subject to the terms, conditions, and limitations prescribed by part 212 of the Board's procedural regulations.

This permit shall be subject to the condition that the holder shall serve the coterminal points Baltimore, Md., Houston, Tex., Miami, Fla., New Orleans, La., Tampa, Fla., and Washington, D.C., only on flights originating or terminating at a point in Belize.

The holder may not during a traffic season serve more than two of the named U.S. points. It may, in its discretion, and with not less than 90 days' notice, change from one of these points to another each season.

The holder is authorized to operate services and carry traffic (including "blind sector traffic," as defined in part 216 of the Board's economic regulations) as provided for in section 5 of annex 1 of the Air Services Agreement between the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, effective July 23, 1977, as amended.

The initial tariff filed by the holder shall not set forth rates, fares and charges lower than those that may be in effect for any U.S. air carrier in the same foreign air transportation; *However*, this limitation shall not apply to a tariff filed after the initial tariff regardless of whether this subsequent tariff is effective before or after the introduction of the authorized service.

The holder shall conform to the airworthiness and airman competency requirements prescribed by the Government of the United Kingdom of Great Britain and Northern Ireland for British international air service.

This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and the United Kingdom of Great Britain and Northern Ireland shall be parties.

By accepting this permit, the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit.

The holder shall keep on deposit with the Board a signed counterpart of CAB Agreement 18900, an agreement relating to liability limitations of the Warsaw Convention and the Hague Protocol approved by Board Order E-23680, May 13, 1966, and a signed counterpart of any amendment or amendments to such agreement which may be approved by the Board and to which the holder becomes a party.

The holder (1) shall not provide foreign air transportation under this permit unless there is in effect third-party liability insurance in the amount of $1,000,000 or more to meet potential liability claims which may arise in connection with its operations under this permit, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the third-party liability insurance provided, and (2) shall not provide foreign air transportation with respect to persons unless there is in effect liability insurance sufficient to cover the obligations assumed in CAB Agreement 18900, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the passenger liability insurance provided. Upon request, the Board may authorize the holder to supply the name and address of an insurance syndicate in lieu of the names and addresses of the member insurers.

The exercise of the privileges granted shall be subject to such other reasonable terms, conditions, and limitation required by the public interest as may from time to time be prescribed by the Board.

This permit shall be effective on ———. Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention, or agreement, this permit shall terminate on (1) August 15, 1979, or (2) upon the effective date of any treaty, convention, or agreement which shall have the effect of eliminating the route or routes authorized by this permit from the routes which may be operated by airlines designated by the Government of the United Kingdom of Great Britain and Northern Ireland (or in the event of the elimination of any part of the authorized route, the authority granted shall terminate to the extent of such elimination); or (3) upon the effective date of any permit granted by the Board to any other carrier designated by the Government of the United Kingdom of Great Britain and Northern Ireland in lieu of the holder, or (4) upon the termination or expiration of the Air Services Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland effective July 23, 1977 (Bermuda II), as amended; *However*, clause (4) of this paragraph shall not apply if, prior to the occurrence of the event specified in clause (4) the operation of the foreign air transportation authorized becomes the subject of any treaty, convention, or agreement to which the United States of America and the United Kingdom of Great Britain and Northern Ireland are or shall become parties.

The Civil Aeronautics Board, through its Secretary, has executed

[5] Our tentative finding is based on the fact that amendment of Belize Airways' permit will not result in a significant increase in civil aviation operations or in an annual change in aircraft fuel consumption of 10 million gallons.

[6] Since provision is made for the filing of objections to this order, petitions for reconsideration will not be entertained.

[7] All members concurred.

this permit and affixed its seal on the ————.

PHYLLIS T. KAYLOR,
Secretary.

(SEAL)

Issuance of this permit to the holder approved by the President of the United States on ————, in ————.

[FR Doc. 78-19464 Filed 7-13-78; 8:45 am]

[6320-01]

[Order 78-7-8; Docket No. 32343]

DALLAS/FORT WORTH/HOUSTON-PHILADELPHIA SERVICE INVESTIGATION

Order on Motions To Consolidate

Issued under delegated authority, July 6, 1978.

Motions to consolidate applications [1] have been filed by Braniff Airways, Inc. (June 26, 1978), Texas International Airlines, Inc. (June 27, 1978), Continental Air Lines, Inc. (June 28, 1978), American Airlines, Inc. (June 29, 1978), and by North Central Airlines, Inc. (July 3, 1978). All of these will be treated here.

By order 78-4-6, served April 3, 1978, the authority to consolidate any new applications which conform to the scope of this proceeding has been delegated to the presiding administrative law judge. The scope of each of the pending applications is identical to, and in no way broadens, the issues to be tried in this proceeding. Neither are they opposed by any party to the proceeding. In these circumstances and as required as a matter of law, *Ashbacker Radio Corp.* v. *Federal Communications Commission*, 326 U.S. 327 (1945), they will be consolidated into this proceeding.

Accordingly, it is ordered: 1. The motions to consolidate of Braniff Airways, Inc. in docket 30267, of Texas International Airlines, Inc. in docket 32444, of Continental Air Lines, Inc. in docket 32923, of American Airlines, Inc. in docket 32936, and of North Central Airlines, Inc. in docket 32978, are granted and the respective applications are consolidated into this proceeding.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within 10 days after the service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless before that date a petition for review thereof is filed, or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

By Richard M. Hartsock, Administrative Law Judge.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-19463 Filed 7-13-78; 8:45 am]

[6320-01]

[Order 78-7-18; Docket No. 30790]

UNITED STATES-BENELUX LOW-FARE PROCEEDING

Order Amending Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 7th day of July 1978.

By order 78-6-97, June 13, 1978, the Board, established the scope of docket 30790. In that order, we stated that any authority awarded will be permissive (pp. 8-9). After further consideration, we will modify the order and place in issue whether any authority awarded in the case should be permissive.

It is therefore ordered, That:

Order 78-6-97, June 13, 1978, be amended to include consideration of whether any awards made in the *United States-Benelux Low-Fare Proceeding*, docket 30790, should be permissive.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[1]

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-19462 Filed 7-13-78; 8:45 am]

[6325-01]

CIVIL SERVICE COMMISSION

DEPARTMENTS OF ENERGY, HEALTH, EDUCATION, AND WELFARE, AND COMMERCE

Grant Of Authority To Make Noncareer executive Assignment

Under the authority of section 9.20 of Civil Service rule IX (5 CFR 9.20) the Civil Service Commission authorizes the following agencies to fill by noncareer executive assignment in the excepted service the positions listed below:

Department of Energy— (1) Executive Assistant to the Assistant Secretary for Resource Applications, Office of the Assistant Secretary for Resource Applications. (2) Administrator, Western Area Power Administration, Office of the Assistant Secretary for Resource Applications.

Department of Health, Education, and Welfare—Deputy Assistant Secretary for Legislation (Welfare), Office of the Deputy Assistant Secretary for Legislation (Welfare), Office of the Assistant Secretary for Legislation, Office of the Secretary.

Department of Commerce—Assistant to the Secretary and Director of Communications, Office of the Secretary.

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-19251 Filed 7-13-78; 8:45 am]

[6325-01]

DEPARTMENTS OF HOUSING AND URBAN DEVELOPMENT, INTERIOR, COMMERCE, JUSTICE

Revocation of Authority To Make Noncareer Executive Assignment

Under authority of section 9.20 of Civil Service rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Departments below to fill by noncareer executive assignment in the excepted service the following positions:

Department of Housing and Urban Development—Executive Vice President, Office of the President, Government National Mortgage Association.

Department of the Interior—(1) Administrator, Mining Enforcement and Safety Administrator, Assistant Secretary, Energy and Minerals; (2) Deputy Administrator, Mining Enforcement and Safety Administration, Assistant Secretary, Energy and Minerals

Department of Commerce—Director of Communications, Office of the Secretary.

Department of Justice—Director, Executive Office for U.S. Attorneys, Office of the Deputy Attorney General.

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-19252 Filed 7-13-78; 8:45 am]

[6325-01]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND VETERANS ADMINISTRATION

Grant of Authority to Make Noncareer Executive Assignment

Under authority of section 9.20 of Civil Service Rule IX (5 CFR 9.20) the Civil Service Commission authorizes the following agencies to fill by nonca-

[1] Braniff for Dallas/Fort Worth-Philadelphia and Houston-Philadelphia, docket 30267; T.I.A. for Houston-Philadelphia, docket 32444; Continental for Houston-Philadelphia, docket 32923; American for Houston-Philadelphia, docket 32936; and North Central for Dallas/Fort Worth and Houston on the one hand, and Philadelphia, on the other, docket 32978.

[1] All Members concurred.

reer executive assignment in the excepted service the positions listed below:

Department of Housing and Urban Development—Deputy Assistant Secretary for Interprogram and Areawide Concerns, Office of the Assistant Secretary for Community Planning and Development.

Veterans Administration—Assistant Deputy Administrator for Manpower Programs, Office of the Administrator.

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-19450 Filed 7-13-78; 8:45 am]

[3510-25]

DEPARTMENT OF COMMERCE

Industry and Trade Administration

NATIONAL BUREAU OF STANDARDS, ET AL.

Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Program Staff, Bureau of Trade Regulation, U.S. Department of Commerce, Washington, D.C. 20230, on or before July 24, 1978.

Regulations (15 CFR 301.9) issued under the cited act prescribe the requirements for comments.

A copy of each application is on file, and may be examined between 8:30 a.m. and 5 p.m., Monday through Friday, in room 6886C of the Department of Commerce Building, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket No. 78-00267. Applicant: National Bureau of Standards, Washington, D.C. 20234. Article: Scanning Electron Microscope, Model HB50A and Accessories. Manufacturer: Vacuum Generators, United Kingdom. Intended use of article: The article is intended to be used to study the surface topography of a variety of microscopic objects, ie., fibers and particulates, such as asbestos fibers, carbon fibers, glass fibers, nylon fibers, and similar objects; and fly ash particulates, other air polluting particulates, industrially significant particulates such as cement powders, soot, fertilizers magnesium smoke, etc. Experiments to be conducted are: measurement of surface topography and size parameters of the micro-objects listed above, characterizing these parameters statistically, and relating the values of the measured properties to the function or effect of the micro-objects. Material which is known to produce certain effects will be measured and characterized in an attempt to provide a detailed understanding of the relationship between parameter and function. Application received by Commissioner of Customs: June 28, 1978.

Docket No. 78-00282. Applicant: William Marsh Rice University, P.O. Box 1892, Houston, Tex. 77001. Article: Automatic Recording Circular Dichroism Spectrometer, Model J500C with Model MCD 1BS Electromagnet Accessory. Manufacturer: JASCO Ltd., Japan. Intended use of article: The article is intended to be used for studies of proteins, synthetic organic compounds, natural products and coordination compounds. Experiments to be conducted will consist of recording the wavelength dependence of the natural and magnetically induced circular dichroism at a variety of temperatures and sample concentration. The spectra will be utilized to establish the three-dimensional relationships of the molecular groups in their characteristic geometry and how such interactions determine the nature of the biological functionality of these molecules. Application received by Commission of Customs: June 23, 1978.

Docket No. 78-00283. Applicant: Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, Mass. 02139. Article: Calorimetric Experimental Furnace and Accessories. Manufacturer: International Flame Research Foundation, The Netherlands. Intended use of article: The article is intended to be used to form the basis of a comprehensive Combustion Research Facility which will be used to evaluate the combustion techniques and conditions required for the successful utilization of alternate fuels such as coal, coal derived liquids, shale oil, and synthetic fuels in large industrial fuel burning plant. The Department of Chemical Engineering Graduate and Undergraduate programs in Fuel Engineering and Principles of Combustion will involve laboratory and experimental courses which make use of the Combustion Research Facility. Application received by Commissioner of Customs: June 23, 1978.

Docket No. 78-00285. Applicant: Mayo Clinic, 200 1st Street SW., Rochester, Minn. 55901. Article: Goniometer Stage, Pole Pieces and Edax System for EM 300 Electron Microscope. Manufacturer: Philips Electronic Instruments NVD, The Netherlands. Intended use of article: The article is an accessory to an electron microscope which will be used for studies of nerve embedded into epoxy from experimental animals suffering from lead, arsenic, and thallium neuropathies. The cellular and subcellular distribution of the heavy metals will be investigated to determine the mechanism by which nerve fibers are damaged in these neuropathies. Application received by Commissioner of Customs: June 28, 1978.

Docket No. 78-00291. Applicant: University of Massachusetts, Department of Polymer Science and Engineering, Amherst, Mass. 01003. Article: High Pressure DTA Instrument. Manufacturer: Rigaku-Denki Co., Japan. Intended use of article: The article is intended to be used for the investigation of the thermal properties including transition temperatures and heats; heat capacities and transitional heat capacity changes of polymeric or plastic materials, crystalline or amorphous. Experiments to be conducted will consist of measurements of the effect of pressure on glass transition and fusion temperatures. Application received by Commissioner of Customs: June 23, 1978.

Docket No. 78-00292. Applicant: Wayne State University School of Medicine, Department of Pathology, 9374 Scott Hall, 540 East Canfield, Detroit, Mich. 48201. Article: Electron Microscope, Model EM 400 HTG and Accessories. Manufacturer: Philips Electronic Instruments NVD, The Netherlands. Intended use of article: The article is intended to be used to carry out the following morphologic research programs: (1) Investigation of the relative contributions that elevated wall stress and vasoactive agents such as angiotensin II and vasopression make to the pathogenesis of the destructive microvascular lesions in severe hypertension; (2) morphometric analysis of the developing left ventricular hypertrophy in the hypertensive rat as well as longitudinal assessment of the effects of antihypertensive therapy. As a corollary of this study morphometric analysis will also be carried out on the development of arterial thickening in hypertension and its possible regression with treatment; (3) study by both transmission and scanning electron microscopy and freeze fracture, changes induced by renal hypertension or arteriosclerosis-prone intercostal orifices of the aorta; (4) examination of the binding of radiolabeled angiotension to cerebral arterial endothelium and smooth muscle cells in severe renal hypertension, a time when the blood-brain barrier is breached; and (5) continuation of the work on the hearts of the genetically diabetic C57BL/KSJ-db/db mice involving investigation of the role of increased vascular permeability in the development of the cardiomyopathic

process. The article will also be used for educational purposes in a course in experimental cardiovascular pathology in which students will be introduced to the area of experimental pathology and taught how the investigation of animal models of human disease can lead to a better understanding and improved therapy of diseases in man. Application received by Commissioner of Customs: June 21, 1978.

Docket No. 78-00295. Applicant: Bureau of Biologics, Food and Drug Administration, Building 29, room 514, 8800 Rockville Pike, Bethesda, Md. 20014. Article: Electron Microscope, Model H-500-1 Side Entry Type and Accessories. Manufacturer: Hitachi, Ltd., Japan. Intended use of article: The article is intended to be used in conducting the following ultrastructural studies pertinent to control and research activities concerned with biological products including viral, rickettsial and bacterial vaccines, allergenic products, blood and blood fractions and diagnostic reagents: (1) The study of viral suspensions to define morphological characteristics and antigenic responses of candidate strains of viruses used for the production of viral vaccines; (2) the study of viral vaccines to insure safety, potency and efficacy of these vaccines, e.g., the presence of extraneous viruses or bacteria in the finished product; (3) the study of thin sections or surface morphology of cells used as substrates in the production of vaccines to define growth characteristics or normal ultrastructure and for the presence of extraneous contaminating microbial agents such as bacteria, mycoplasma, yeast, and viruses including candidate oncogenic viruses; (4) study of the tissues and body fluids from humans and animal sources to discover the causative agent or agents involved in diseases and to describe the evolution of the disease and its consequences under controlled conditions in sub-human primate animal models; (5) the study of blood, blood clots, blood cells and blood derivatives under varying conditions; (6) the study of particulate contaminants in products regulated by the FDA; (7) the study of the relationship of human diseases, sylvan hosts and ectoparasite vectors in the transmission of diseases; (8) the study of bacterial morphology, at the ultrastructural level including surface structures, e.g. fresh isolates of gonococci contain large numbers of pili; (9) the study of vaccines produced from disrupted viruses; and (10) the study of nucleic acids of viruses and bacterial, e.g., extra chromosomal DNA of bacterial (plasmids) are associated with antibiotic resistance and other characteristics which can be transferred to other strains of bacteria by various means. Application received by Commissioner of Customs: June 23, 1978.

Docket No. 78-00296. Applicant: Stanford University, 851 Welch Road, Palo Alto, Calif. 94304. Article: Electron Microscope, Model EM 400 and Accessories. Manufacturer: Philips Electronic Instruments NVD, The Netherlands. Intended use of article: The article is intended to be used for studies of the following materials in ongoing research programs: (1) Cadmium sulphide, cadmium telluride, indium phosphide and other materials for solar cell applications; (2) nickel-titanium and copper-zinc alloys which illustrate shape memory behavior; (3) dispersion strengthened nickel alloys which have creep resistance at high temperatures; (4) warm-worked cast iron which shows superplastic properties and may be formed easily at medium temperatures; and (5) alumina and alkali metal ferrocyanides which are solid state electrolytes useful for battery and energy-related applications. Research will be conducted to correlate the properties of materials such as the above with their structure (arrangement of atoms) and microstructure (arrangement of defects). In addition, the article will be used for educational purposes in research programs and in the following courses:

Atomic Arrangements in solids (MSE 180).
Transmission Electron Microscopy (MSE 243).
Transmission Electron Microscopy Laboratory (MSE 253).
Model Imaging Methods in Materials Science (MSE 236).

Application received by Commissioner of Customs June 23, 1978.

Docket No. 78-00298. Applicant: University of Nebraska-Lincoln, Department of Veterinary Science, Institute of Agriculture and Natural Resources, Lincoln, Nebr. 68583. Article: LKB 2128-010 Ultrotome IV Ultramicrotome and Accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for ultrathin sectioning of different types of animal and plant tissues and other biological materials such as bacteria, parasites, viruses, cultured cells, and tissues which have been embedded in epoxy resins. These specimens will be studied to further basic knowledge of cell and tissue ultrastructure and to provide at the fine structural level the enzymes and hormone localization and distribution in cells and tissue under normal, pathological and artificially induced disease conditions both *in vivo* and *in vitro*. The article will also be used in courses in Veterinary Histology and Fine Structures and Ultrastructural Pathology to train students and trainees in the proper use and application of electron microscopy techniques. Application received by Commissioner of Customs: June 23, 1978.

Docket No. 78-00300. Applicant: Tufts University, Lane Hall, Medford, Mass. 02155. Article: PS-400 Coherent NMR Pulse Spectrometer and Accessories. Manufacturer: Spin-Tech Electronics Ltd., Canada. Intended use of article: The article is intended to be used to study liquid crystals, soaps and lipids in the liquid crystal and solid state. Their dynamics and ordering properties such as orientation, lateral and rotational diffusion, molecular conformational equilibrium, etc., will be studied by a variety of multiple-pulse nuclear magnetic resonance experiments, including spinlatice relaxation (T_1) of both protons and deuterons, relaxation in the rotating from ($T_{1\rho}$ or spin-locking), second moment (M_2) by solid echo technique and Jeener-Brookaert pulse sequence. The article will also be used in the following courses:

Nuclear Magnetic Resonance—to teach the principle and application of NMR to physical chemistry and biophysical chemistry students.
Research (course numbers 91, 92, 297, 298)—by graduate students and advanced undergraduate students engaged in the above research.

Application received by Commissioner of Customs: June 23, 1978.

Docket No. 78-00301. Applicant: Tufts University, Dept. of Purchasing, Medford, Mass. 02155. Article: Gas Analysis Instrument; Experimental. Manufacturer: Rheinmetall, West Germany. Intended use of Article: The article is intended to be used in the development of a continuous surface chromatographic instrument that will separate mixtures of gases of vapors for the purposes of purification or identification. Application received by Commissioner of Customs: June 23, 1978.

Docket No. 78-00303. Applicant: National Radio Astronomy Observatory Associated Universities, Inc., 2010 N. Forbes Boulevard, Suite 100, Tucson, Ariz. 85705. Article: Klystron, Model VRB2113A30. Manufacturer: Varian Associates of Canada Ltd., Canada. Intended use of article: The article is intended to be used as a phase-locked local oscillator in a millimeter wave radio astronomy receiver which is sued in conjunction with a microwave antenna to measure the intensity, polarization, frequency and direction of cosmic radiation. Application received by Commissioner of Customs: June 26, 1978.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director,
Statutory Import Programs Staff.

[FR Doc. 78-19376 Filed 7-13-78; 8:45 am]

[3510-22]

National Oceanic and Atmospheric Administration

SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

Meeting

ACTION: Notice of Public Meeting.

SUMMARY: The South Atlantic Fishery Management Council established by section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265) will meet to: (1) review status reports on development of fishery management plans; (2) review foreign fishing permit applications, if any; and (3) conduct other management business.

DATES: The meeting will start August 22, 1978, at 1 p.m. and adjourn at about noon on August 24, 1978. The meeting is open to the public.

ADDRESS: The meeting will be held at South Atlantic Fishery Management Council Headquarters, 1 Southpark Circle, Suite 306, Charleston, S.C.

FOR FURTHER INFORMATION CONTACT:

Ernest D. Premetz, Executive Director, South Atlantic Fishery Management Council, 1 Southpark Circle, Suite 306, Charleston, S.C. 29407, telephone 803-571-4366.

Dated: July 11, 1978.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fishers Service.

[FR Doc. 78-19433 Filed 7-13-78; 8:45 am]

[3510-12]

WEATHER MODIFICATION ADVISORY BOARD

Availability of Final Report

The Weather Modification Advisory Board has completed a report for the Secretary of Commerce. The report contains recommendations for a national policy, a national research and development program, and other aspects of weather modification. The Board's study will form the basis of a report by the Secretary to the President and the Congress as required by the National Weather Modification Policy Act of 1976 (Pub. L. 94-490), enacted on October 13, 1976.

Copies of the Board's report are available from Dr. Ronald L. Lavoie, Director, Science and Academic Affairs Office, National Oceanic and Atmospheric Administration, Rockville, Md. 20852, phone 301-443-8721. Comments on the report would be appreciated and should be addressed to Dr. Lavoie before August 15, 1978.

Dated: July 11, 1978.

THEODORE P. GLEITER,
Assistant Administrator for Administration.

[FR Doc. 78-19512 Filed 7-13-78; 8:45 am]

[3510-22]

WESTERN PACIFIC FISHERY MANAGEMENT COUNCIL

Meeting

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council, established by section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), will hold its Twelfth Regular Meeting. The proposed agenda includes: (1) administrative and financial reports, (2) consideration of the first draft of a Fishery Management Plan for Pacific Billfishes and Associated Species, (3) consideration of final drafts of Fishery Management Plans for Spiny Lobsters and Precious Corals. For information on seating, changes to the agenda or schedule, or written comments contact the Executive Director.

DATES: The meeting will be on August 2, 3, 4, and 5, 1978 starting at 9 a.m. and adjourning at 5 p.m. This will be a joint meeting of the Council with its Advisory Panel, open to the public.

ADDRESS: The meeting will be held in the Ekahi Room of the King Kamehameha Hotel, Kailua-Kona, Island of Hawaii.

FOR FURTHER INFORMATION CONTACT:

W. G. Van Campen, Executive Director, Western Pacific Fishery Management Council, Room 1506, 1164 Bishop Street, Honolulu, Hawaii 96813, telephone 808-523-1368.

Dated: July 11, 1978.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc. 78-19434 Filed 7-13-78; 8:45 am]

[3510-04]

National Technical Information Service

GOVERNMENT-OWNED INVENTIONS

Notice of Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and possibly foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of the patents cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231, for 50 cents each. Requests for copies of patents must include the patent number.

Copies of the patent applications can be purchased from the National Technical Information Service (NTIS), Springfield Va. 22161 for $4 ($8 outside North American Continent). Requests for copies of patent applications must include the PAT-APPL number. Claims are deleted from patent application copies sold to the public to avoid premature disclosure in the event of an interference before the Patent and Trademark Office. Claims and other technical data will usually be made available to serious prospective licensees by the agency which filed the case.

Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

U.S. DEPARTMENT OF THE AIR FORCE, AF/JACP, 1900 Half Street SW., Washington, D.C. 20324.

Patent Application 801,453: Synthesis of Fluorotrinitromethane; filed May 26, 1977.

Patent Application 856,385: Fluorocarbon Bis(o-Aminophenol) Compounds, Containing a Hydrocarbon Moiety; filed Dec. 1, 1977.

Patent 4,074,523: Pressure Actuated Collapsible Curtain Liners for a Gas Turbine Engine Nozzle; filed Dec. 8, 1976; patented Feb. 21, 1978; not available NTIS.

Patent 4,074,527: Self-Contained Power Subsystem; filed Apr. 9, 1976; patented Feb. 21, 1978; not available NTIS.

Patent 4,074,859: Deformable Plug for an Aircraft Engine Exhaust Nozzle, filed Nov. 10, 1976; patented Feb. 21, 1978; not available NTIS.

Patent 4,075,073: Method for the Preparation of Bis(Perfluoro-t Butyl) Peroxide; filed Feb. 23, 1977; patented Feb. 21, 1978; not available NTIS.

Patent 4,075,246; 1,3-Bis(2,2,2-Fluorodinitroethoxy)-2,2-Bis(difluoramino) Propane; filed Oct. 29, 1976; patented Feb. 21, 1978; not available NTIS.

Patent 4,076,418: Film Slewing Device for Drum Type Contact Printer; filed Apr. 5, 1976; patented Feb. 28, 1978; not available NTIS.

Patent 4,076,454: Vortex Generators in Axial Flow Compressor; filed June 25, 1976; patented Feb. 28, 1978; not available NTIS.

U.S. DEPARTMENT OF ENERGY, Assistant General Counsel for Patents, Washington, D.C. 20545.

Patent 4,064,025: Separation of Carbon and Nitrogen Isotopes by Selective Photodissociation Azo or Diazo Compounds; filed Feb. 24, 1976; patented Dec. 20, 1977; not available NTIS.

U.S. DEPARTMENT OF THE INTERIOR, Branch of Patents, 18th and C Streets NW., Washington, D.C. 20240.

Patent 4,053,775: Constant Flow Radon Gas Monitor; filed Jan. 29, 1976; patented Oct. 11, 1977; not available NTIS.

Patent 4,053,776: Sub-Micron Particle Detector; filed May 25, 1976; patented Oct. 11, 1977; not available NTIS.

Patent 4,055,051; Unitary Drill Bit and Roof Bolt; filed Jan. 8, 1976; patented Oct. 25, 1977; not available NTIS.

Patent 4,057,115: Flexible Shaft for a Roof Drill; filed May 7, 1976; patented Nov. 8, 1977; not available NTIS.

Patent 4,057,478: Electrochemical Gas Monitor; filed Feb. 5, 1976; patented Nov. 8, 1977; not available NTIS.

Patent 4,058,668: Cold Crucible; filed Mar. 1, 1976; patented Nov. 15, 1977; not available NTIS.

Patent 4,062,412: Flexible Shaft Drilling System; filed Jan. 29, 1976; patented Dec. 13, 1977; not available NTIS.

Patent 4,062,595: Automatic Face Transfer Linear Cutting Rotary Head Continuous Mining Machine and Method; filed Oct. 15, 1976; patented Dec. 13, 1977; not available NTIS.

Patent 4,074,778: Square Hole Drill; filed July 14, 1976; patented Feb. 21, 1978; not available NTIS.

Patent 4,074,779: Backwashing System for Slurry Pick-Up Used in Hydraulic Borehole Mining Devices; filed May 9, 1977; patented Feb. 21, 1978; not available NTIS.

U.S. DEPARTMENT OF THE NAVY, Assistance Chief for Patents, Office of Naval Research, Code 302, Arlington, Va. 22217.

Patent application 840,189: Oil Level Indicator for Use with Damping Fluid Metering Pins; filed Oct. 6, 1977.

Patent application 851,022: Digital Plotting System for Displaying Straight Line Information; filed Nov. 11, 1977.

Patent application 851,086: Digital Plotting System for Displaying Character Information; filed Nov. 11, 1977.

Patent application 864,286: Digital Plotting System for Graphic Information; filed Dec. 20, 1977.

Patent application 865,076: Digital Plotting System for Displaying Curved Line Information; filed Dec. 20, 1977.

Patent application 880,514: Silicon-Phthalocyanine-Siloxane Polymers; filed Feb. 23, 1978.

Patent application 880,515: Silicon-Phthalocyanine-Siloxy Monomers; filed Feb. 23, 1978.

[FR Doc. 78-19396 Filed 7-13-78; 8:45 am]

[3510-17]

Office of the Secretary

ADVISORY BOARD TO THE U.S. MERCHANT MARINE ACADEMY

Notice of Renewal

In accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976) and Office of Management and Budget Circular A-63 of March 1974, and after consultation with the General Services Administration, it has been determined that the renewal of the advisory board to the U.S. Merchant Marine Academy is in the public interest in connection with the performance of duties imposed on the Department by law.

The Board was first established on July 11, 1956, in accordance with Public Law 691-84th Congress, and the Board was scheduled to terminate on July 11, 1978.

The purpose of the Board is to examine the course of instruction and the management of the Academy and advise the Assistant Secretary for Maritime Affairs (Maritime Administrator), with a copy of such advice to the Superintendent, relative thereto. Its recommendations, almost all of which were accepted and implemented by the Department, have meaningfully contributed to the Academy's operation. Our review indicates that the Board's function cannot be accomplished by any organizational element or other committee of the Department and does not duplicate any other committee's function.

As initially established the Board will continue with a balanced representation not to exceed seven members and will operate in compliance with the provisions of the Federal Advisory Committee Act, as amended. The Chairperson will be appointed by the Secretary of Commerce from among the members.

Copies of the Board's revised Charter will be filed with appropriate committees of the Congress.

Inquiries or comments may be addressed to the Committee Control Officer, Arthur W. Friedberg, Office of Maritime Manpower, U.S. Department of Commerce, Maritime Administration, Washington, D.C. 20230, 202-377-3018.

Dated: July 3, 1978.

GUY W. CHAMBERLIN, Jr.,
Assistant Secretary for Administration.

[FR Doc. 78-19466 Filed 7-13-78; 8:45 am]

[6820-33]

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

PROCUREMENT LIST 1978

Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Deletion from procurement list.

SUMMARY: This action deletes from procurement list 1978 commodities produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: July 14, 1978.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Va. 22201.

FOR FURTHER INFORMATION CONTACT:

C. W. Fletcher, 703-557-1145.

SUPPLEMENTARY INFORMATION: On May 19, 1978 the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (43 F.R. 21714) of proposed deletion from Procurement List 1978, November 14, 1977 (42 F.R. 59015).

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

Accordingly, the following commodities are hereby deleted from Procurement List 1978:

CLASS 7220

Mat, Floor (IB).
7220-00-224-6491 (Coir Fiber).
7220-00-205-3100 (Coir Fiber).
7220-00-224-6488 (Rubberized Fabric).

C. W. FLETCHER,
Executive Director.

[FR Doc. 78-19428 Filed 7-13-78; 8:45 am]

[6820-33]

PROCUREMENT LIST 1978

Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to procurement list 1978 services to be provided by workshops for the blind or other severly handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 16, 1978.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Va. 22201.

FOR FURTHER INFORMATION CONTACT:

C. W. Fletcher, 703-557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77.

If the committee approves the proposed additions, all entities of the Federal Government will be required to procure the services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following services to Procurement List 1978, November 14, 1977 (42 FR 59015):

SIC 0782

Grounds Maintenance for U.S. Army Reserve Centers listed below:
1. John Williams Street, Attleboro, Mass.
2. 675 American Legion Highway Roslindale, Mass.
3. 13 Eldridge Street, Taunton, Mass.

SIC 7349

Janitorial/Custodial Service for U.S. Army Reserve Centers listed below:
1. Belmont and Manley Street, Brockton, Mass.
2. 915 West Chestnut Street, Brockton, Mass.
3. Leavitt Street, Hingham, Mass.
4. John Williams Street, Attleboro, Mass.
5. 675 American Legion Highway, Roslindale, Mass.
6. 13 Eldridge Street, Taunton, Mass.

SIC 7349

Janitorial/Custodial Service for the following locations:
Building 5025 OSI Spaces only
Building 3509 Social Action Spaces only
Fairchild Air Force Base, Wash.
U.S. Federal Building and Courthouse, Springfield, Mass.
Building 22 Commissary
Building 220
Whidbey Island, Naval Air Station, Oak Harbor, Wash.
U.S. Federal Building and Post Office, Bangor, Maine
Buildings 4, 10, 17, Cameron Station, Va.

C. W. FLETCHER,
Executive Director.

[FR Doc. 78-19429 Filed 7-13-78; 8:45 am]

[3910-01]

DEPARTMENT OF DEFENSE

U.S. READINESS COMMAND JOINT READINESS EXERCISE GALLANT EAGLE 79

Public Hearing

JULY 11, 1978.

Notice is hereby given that an informal public hearing will be held for the purpose of soliciting comments on the Draft Environmental Impact Statement for the proposed exercise Gallant Eagle 79.

Gallant Eagle 79 is a joint readiness exercise directed by the Joint Chiefs of Staff and sponsored by the U.S. Readiness Command. This proposed exercise is scheduled to be conducted in the Southeastern United States, at the Eglin Air Force Base Test range Complex, Fla., and adjacent coastal waters during the period October 17 to November 16, 1978. Another installation considered was Fort Stewart, Ga. This exercise will involve approximately 23,000 personnel in joint air and ground operations. Air assault and mechanized forces will be engaged in ground tactical operations for approximately 8 days.

Adverse impacts include increased air pollution, damage to vegetation caused by track vehicle operations, and the possible disturbance of the Red-cockaded Woodpecker and Okaloosa Darter, both endangered species.

A Draft Environmental Impact Statement (DEIS) for this proposed action was filed with the Environmental Protection Agency (EPA), on June 22, 1978. Copies are available from:

U.S. Readiness Command, Attn: RCJ4-L, MacDill Air Force Base, Fla. 33608.
U.S. Air Force Forces, Readiness Command, Attn: DEEV, Langley Air Force Base, Va. 23665.
U.S. Army Forces, Readiness Command, Attn: AFOP-JTX, Fort McPherson, Ga. 30330.
Armament Development and Test Center (ADTC), Attn: OI, Eglin Air Force Base, Fla. 32542.

In addition, copies have been forwarded to the following locations for public reference:

Office of the mayor, city of Fort Walton Beach, Fla.
Office of the mayor, city of Valparaiso, Fla.
Office of the mayor, city of Milton, Fla.
Office of the mayor, city of Crestview, Fla.
Office of the mayor, city of Defuniak Springs, Fla.
Office of the mayor, town of Mary Esther, Fla.
Office of the mayor, town of Destin, Fla.
Office of the mayor, town of Niceville, Fla.
Office of the mayor, town of Shalimar, Fla.
Chamber of Commerce, Crestview, Fla.
Chamber of Commerce, Fort Walton Beach, Fla.
Chamber of Commerce, Niceville-Valparaiso, Fla.
Chamber of Commerce, Defuniak Springs, Fla.
Public Library, Crestview, Fla.
Public Library, Defuniak Springs, Fla.
Public Library, Fort Walton Beach, Fla.
Public Library, Niceville, Fla.
Public Library, Valparaiso, Fla.

Questions concerning the hearing may be directed to the Information Officer, Eglin Air Force Base, telephone, 904-882-3931.

The following procedures will be followed during the informal public hearing. Individual speakers will be limited to 5 minutes, with 10 minutes for a group spokesman. There will be no relinquishing of time by one speaker to another. Written statements, in addition to, or in lieu of, oral presentations will be accepted. Prospective speakers are requested to submit their intentions in writing to Usredcom/RCJ4L, MacDill Air Force Base, Fla. 33608. The closing date for including written communications in the hearing record is five days after date of public hearing.

The informal public hearing will be held at the following time and place: 7 p.m., Wednesday, August 2, 1978, at the Niceville Senior High School Auditorium, 800 John Sims Parkway, Niceville, Fla.

This notice and any changes will be released to the local news media.

FRANKIE S. ESTEP,
Air Force Federal Register Liaison Officer, Directorate of Administration.

[FR Doc. 78-19456 Filed 7-13-78; 8:45 am]

[3910-01]

Department of the Air Force

USAF SCIENTIFIC ADVISORY BOARD

Meetings

JULY 6, 1978.

The USAF Scientific Advisory Board Aeronautical Systems Division Advisory Group will hold meetings on August 3-4, 1978 from 8:30 a.m. to 5 p.m. both days at Wright-Patterson Air Force Base, Ohio, in room 222, Building 14, Area B.

The Group will receive classified briefings and hold classified discussions on selected programs and projects relating to the missions of the Aeronautical Systems Division and Air Force Wright Aeronautical Laboratories.

The meetings concern matters listed in section 552b(c) of Title 5, U.S. Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information contact the Scientific Advisory Board Secretariat at 202-697-8845.

FRANKIE S. ESTEP,
Air Force Federal Register Liaison Officer, Directorate of Administration.

[FR Doc. 78-19478 Filed 7-13-78; 8:45 am]

[3810-70]

Defense Advanced Research Projects Agency

PRIVACY ACT OF 1974

Deletion of System of Records

AGENCY: Defense Advanced Research Projects Agency (DARPA).

ACTION: Deletion of a system of records.

SUMMARY: The Defense Advanced Research Projects Agency (DARPA) proposes to delete a system of records subject to the Privacy Act of 1974. The deleted system and reason for its deletion is specifically set forth below.

DATES: This system shall be deleted as proposed without further notice on August 13, 1978, unless comments are received on or before August 13, 1978, which would result in a contrary determination and require republication for further comments.

ADDRESS: Privacy Act Officer, Defense Advanced Research Projects

Agency, 1400 Wilson Boulevard, Arlington, Va. 22209.

FOR FURTHER INFORMATION CONTACT:

Mr. James S. Nash, 202-695-0970.

MAURICE W. ROCHE,
Director Correspondence and Directives Washington Headquarters Services Department of Defense.

JULY 11, 1978.

DELETION

E ARPA 003

System name: ARPA Basic File (42 FR 50783) September 28, 1977.

Reason: This system of records was never incorporated as projected. Therefore, this system never contained any personnel data.

[FR Doc. 78-19423 Filed 7-13-78; 8:45 am]

[3810-70]

Defense Civil Preparedness Agency

PRIVACY ACT OF 1974

Deletion of System of Records

AGENCY: Defense Civil Preparedness Agency (DCPA).

ACTION: Deletion of a system of records.

SUMMARY: The Defense Civil Preparedness Agency (DCPA) proposes to delete a system of records subject to the Privacy Act of 1974. The deleted system and reason for its deletion is specifically set forth below.

DATES: This system shall be deleted as proposed without further notice on August 13, 1978, unless comments are received on or before August 13, 1978, which would result in a contrary determination and require republication for further comments.

ADDRESS: Privacy Act Officer, Defense Civil Preparedness Agency, the Pentagon, Washington, D.C. 20301.

FOR FURTHER INFORMATION CONTACT:

Mr. Walter A. Girstantas, 202-695-3402 at the above address.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

JULY 11, 1978.

DELETION

CWNG 3

System name: DCPA WNG 3, Decision Info Distribution Sys (DIDS) Volunteers (42 FR 50730) September 28, 1977

Reason: This system of records has been eliminated. DIDS transmissions are no longer broadcast.

[FR Doc. 78-19424 Filed 7-13-78; 8:45 am]

[3128-01]

DEPARTMENT OF ENERGY

WASTE ISOLATION PILOT PLANT; CARLSBAD, N. MEX.

Intent to Prepare Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice of Intent to Prepare Environmental Impact Statement.

SUMMARY: The Department of Energy (DOE) is commencing the preparation of a draft environmental impact statement (DEIS) for the proposed Waste Isolation Pilot Plant (WIPP) in Eddy County, New Mexico.

All interested agencies, organizations, or persons are invited to submit comments or suggestions for consideration in connection with the preparation of the DEIS. Upon completion of the DEIS, its availability will be announced in the FEDERAL REGISTER at which time public comments will again be solicited.

DATES: Comments and suggestions for consideration in preparation of the DEIS should be received on or before August 18, 1978.

FOR FURTHER INFORMATION AND ADDRESS FOR COMMENTS CONTACT:

W. H. Pennington, Office of NEPA Affairs, U.S. Department of Energy, Washington, D.C. 20545.

SUPPLEMENTARY INFORMATION: The main objectives of the WIPP, being considered for construction in an underground salt formation 25 miles east of Carlsbad, N. Mex., are: (1) To provide a facility for the permanent disposal of defense-generated transuranic waste; and (2) to provide the capability for experiments with various types of wastes in an actual repository environment. All wastes to be disposed of in WIPP will remain retrievable until it is determined that they may safely be allowed to remain in WIPP in perpetuity.

In addition, a DOE Task Force has recommended that the WIPP mission be expanded to include the demonstration of disposal with retrievable capability of up to 1,000 commercial spent fuel assemblies. A decision by the Secretary of Energy on this recommendation is not expected to be made before late 1978.

The proposed project involves the use of 17,200 acres of Federal land and 1,760 acres of State land for the proposed WIPP site in southeastern New Mexico. Another 840 acres will be required for rights-of-way. Surface facilities for radioactive waste handling will require about 100 acres above ground. There will be extensive underground handling and storage facilities in the salt formation at the WIPP site.

It is planned that the DEIS for WIPP analyze the site specific environmental impacts of construction, operation and decommissioning of the proposed facility at the candidate site near Carlsbad, N. Mex. The DEIS will also evaluate the impacts of withdrawal of the candidate WIPP site from the public domain. The impacts of transportation of various types of wastes to WIPP also will be evaluated. In addition, the DEIS will analyze the impacts of removal and treatment for disposal in WIPP of defense generated TRU wastes stored at Idaho. Reasonably available alternatives, including the absence of a WIPP facility and alternate missions, geologic media, sites and facility designs for the WIPP will be evaluated. The environmental impacts of seabed, ice sheet and extraterrestrial disposal, and transmutation will not be analyzed since these nonconventional disposal means are not considered to be reasonably available alternatives for the WIPP in the time frame for possible construction of the facility.

Copies of technical reports currently planned to be utilized in the preparation of this DEIS will be available for inspection at the Albuquerque Operations Office, Kirtland Air Force Base, Albuquerque, New Mexico. Those desiring a copy of the DEIS when it is issued should notify Mr. Pennington.

Dated at Washington, D.C., this 11th day of July 1978.

For the Department of Energy.

WILLIAM P. DAVIS,
Deputy Director of Administration.

[FR Doc. 78-19509 Filed 7-13-78; 8:45 am]

[6740-02]

Federal Energy Regulatory Commission

[Docket Nos. G-3912, *et al.*]

ASHLAND EXPLORATION, INC. (SUCCESSOR TO ASHLAND OIL, INC.)

Errata Notice, July 6, 1978 and Notice of Redesignation

JUNE 8, 1978.

Tabulation—Delete Exhibits "E" and "F" and all references thereto and substitute in lieu thereof the attached Appendices "A" and "B".

Any person desiring to be heard or to make any protest with reference to said application should on or before July 17, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to

intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

APPENDIX A

All active rate schedules of Ashland Oil, Inc., to be redesignated as Ashland Exploration, Inc., Ashland Exploration, Inc. will retain the predecessor's old rate schedule numbers.

Rate Schedule No.	Certificate Docket No.	Purchaser
4	G-7663	Lone Star Gas Co.
44	G-7663	El Paso Natural Gas Co.
59	G-12309	Northern Natural Gas Co.
66	G-13243	United Gas Pipe Line Co.
68	G-7663	Lone Star Gas Co.
69	G-18117	Michigan-Wisconsin Pipe Line Co.
70	G-7663	Lone Star Gas Co.
72	CI62-419	Northern Natural Gas Co.
73	CI61-749	Columbia Gas Transmission Corp.
74	CI62-191	Natural Gas Pipeline Co. of America.
75	CI62-494	Northern Natural Gas Co.
77	CI62-908	Do.
78	CI60-738	Panhandle Eastern Pipe Line Co.
79	CI63-159	Northern Natural Gas Co.
80	CI63-401	Michigan-Wisconsin Pipe Line Co.
81	CI63-489	Do.
82	G-3913	Consolidated Gas Supply Corp.
83	G-3913	Do.
84	G-3913	Do.
85	G-3913	Do.
87	G-3913	Pennzoil United, Inc.
88	G-3913	Do.
89	G-3913	Columbia Gas Transmission Corp.
90	G-3913	Do.
91	G-3913	Do.
94	G-3913	United Fuel Gas Co.
95	G-3913	Columbia Gas Transmission Corp.
96	G-3913	Do.
99	G-3913	Kentucky-West Virginia Gas Co.
103	G-3913	Southern Natural Gas Co.
104	G-3913	Mississippi River Fuel Co.
105	CI63-866	Arkansas-Louisiana Gas Co.
107	G-3892	Colorado Interstate Gas Co.
108	G-4309	Panhandle Eastern Pipe Line Co.
109	G-4316	Do.
110	G-8447	Colorado Interstate Gas Co.
111	G-3912	Cities Service Gas Co.
112	G-3912	Colorado Interstate Gas Co.
113	G-3912	Consolidated Gas Supply Corp.
115	G-3912	Mobil Oil Corp.
116	G-3912	Northern Natural Gas Co.
117	G-3912	Phillips Petroleum Co.
118	G-3912	Do.
120	G-4328	Panhandle Eastern Pipe Line Co.
121	G-4314	Do.
122	G-7230	Northern Natural Gas Co.
123	G-8446	Colorado Interstate Gas Co.
124	G-9947	Natural Gas Pipeline Co. of America.
125	G-10478	Panhandle Eastern Pipe Line Co.
126	G-10523	Colorado Interstate Gas Co.
127	G-10546	Do.
128	G-10606	Natural Gas Pipeline Co. of America.
129	G-10803	Colorado Interstate Gas Co.
130	G-11402	Northern Natural Gas Co.
132	G-12788	Kansas-Nebraska Natural Gas Co.
133	G-12802	Northern Natural Gas Co.
134	G-13929	Colorado Interstate Gas Co.
135	G-3912	Panhandle Eastern Pipe Line Co.
136	G-17911	Texas Gas Transmission Corp.
137	G-18916	Michigan-Wisconsin Pipe Line Co.
138	G-20308	Colorado Interstate Gas Co.
140	CI60-493	Columbia Gas Transmission Corp.
141	CI61-16	Panhandle Eastern Pipe Line Co.
142	CI61-24	Do.
143	CI66-73	Colorado Interstate Gas Co.
144	CI61-1182	Texas Gas Transmission Corp.
145	CI61-1361	Panhandle Eastern Pipe Line Co.
147	CI62-477	Northern Natural Gas Co.
148	CI62-540	Panhandle Eastern Pipe Line Co.
150	G-3912	Colorado Interstate Gas Co.
151	G-3913	United Fuel Gas Co.
152	G-3913	Columbia Gas Transmission Corp.
153	CI64-159	Panhandle Eastern Pipe Line Co.
154	CI64-423	Transwestern Pipeline Co.
155	CI64-446	Arkansas-Louisiana Gas Co.
156	CI64-980	Texas Gas Transmission Corp.
157	CI64-638	Warren Petroleum Corp.
158	CI64-644	Natural Gas Pipeline Co. of America.
159	CI64-681	Northern Natural Gas Co.
160	CI64-686	Arkansas-Louisiana Gas Co.
162	CI64-1381	Do.
163	CI64-1422	Oklahoma Natural Gas Gathering Corp. Pioneer Gas Products Co.
164	CI64-1440	Horizon Oil & Gas Co. of Texas.
165	CI65-123	Kansas-Nebraska Natural Gas Co.
169	CI65-441	Natural Gas Pipeline Co. of America.
170	CI65-545	Northern Natural Gas Co.
171	CI65-660	Columbia Gas Transmission Corp.
172	CI65-828	Panhandle Eastern Pipe Line Co.
176	CI66-639	Cities Service Gas Co.
177	CI67-269	Panhandle Eastern Pipe Line Co.
178	CI67-228	Colorado Interstate Gas Co.
179	CI67-341	Panhandle Eastern Pipe Line Co.
181	CI67-633	Arkansas-Louisiana Gas Co.
182	CI67-751	Northern Natural Gas Co.
183	CI62-1359	Tennessee Gas Pipeline Co.
184	CI67-1098	Michigan-Wisconsin Pipe Line Co.
185	CI67-1631	Natural Gas Pipeline Co. of America.
186	CI68-542	Consolidated Gas Supply Corp.
187	CI68-746	Natural Gas Pipeline Co. of America.
189	CI68-983	Colorado Interstate Gas Co.
190	CI68-982	Do.
191	CI68-986	Do.
192	CI68-1237	Panhandle Eastern Pipe Line Co.
193	CI69-197	Columbia Gas Transmission Corp.
194	CI69-197	Panhandle Eastern Pipe Line Co.
195	CI69-864	Michigan-Wisconsin Pipe Line Co.
196	CI70-101	Colorado Interstate Gas Co.
197	CI70-736	Arkansas-Louisiana Gas Co.
198	CI70-1018	Oklahoma Natural Gas Gathering Corp. Pioneer Gas Products Co.
200	CI71-113	Western Transmission Corp.
201	CI71-283	Southern Natural Gas Co.
202	CI71-404	United Fuel Gas Co.
203	CI71-467	Industrial Gas Corp.
204	CI71-477	The Inland Gas Co., Inc.
205	CI71-838	Texas Gas Transmission Corp.
207	CI72-184	Do.
208	CI68-979	Michigan-Wisconsin Pipe Line Co.
209	CI69-858	Truckline Gas Co.
211	CI72-372	Mountain Fuel Supply Co.
212	CI62-505	Consolidated Gas Supply Corp.
215	G-10982	El Paso Natural Gas Co. & Pecos Co.
216	G-10983	Tennessee Gas Transmission Co.
217	G-20601	El Paso Natural Gas Co. & Pecos Co.
218	G-20600	Do.
219	CI60-120	United Gas Pipe Line Co.
220	CI62-1097	El Paso Natural Gas Co. & Pecos Co.
223	G-13874	Tennessee Gas Transmission Co.
224	G-16362	Natural Gas Pipeline Co. of America.
225	G-18150-	Texas Eastern Transmission Corp.
227	CI67-594	United Gas Pipe Line Co.
229	CI67-717	Northern Natural Gas Co.
230	G-9579	Tennessee Gas Pipeline Co.
231	CI71-760	Valley Gas Transmission, Inc.
232	CI72-255	Michigan-Wisconsin Pipe Line Co.
233	CI72-352	Do.
234	CI73-98	Transcontinental Gas Pipe Line Corp.
235	CI73-276	Michigan-Wisconsin Pipe Line Co.
236	CI73-324	El Paso Natural Gas Co.
237	CI73-602	Tennessee Gas Co.
238	CI71-606	Trunkline Gas Co.
239	CI73-318	Michigan-Wisconsin Pipe Line Co.
240	CI73-377	Do.
241	CI74-613	Do.
242	CI75-24	Do.
243	CI75-494	Phillips Petroleum Co.
244	CI75-521	Cities Service Gas Co.
245	CI75-590	Michigan-Wisconsin Pipe Line Co.
247	CI76-565	Panhandle Eastern Pipe Line Co.
248	CI76-645	Colorado Interstate Gas Co.
249	CI76-739	Michigan-Wisconsin Pipe Line Co.
250	CI76-791	Colorado Interstate Gas Co.
251	CI75-122	Trunkline Gas Co.
252	CI77-280	Michigan-Wisconsin Pipe Line Co.
253	CI77-350	United Gas Pipe Line Co.
254	CI76-745	Colorado Interstate Gas Co.
255	CI77-738	Kansas-Nebraska Natural Gas Co., Inc.
256	CI77-778	Do.

APPENDIX B

Other FERC proceedings where Ashland Oil, Inc. is a participant.

AREA OR NATIONAL RATE

Docket Nos. AR61-1, AR61-2, AR64-1, AR67-1, AR69-1, AR70-1, R-389-B, RM75-14, RM77-13, and AR64-2.

RULEMAKING PROCEEDINGS

Docket Nos. R-393, R-411, R-425, R-458, R-459, R-478, RM74-12, RM74-16, RM74-18, RM74-19, RM74-24, RM75-25, RM76-8, RM76-10, and RM76-37.

MISCELLANEOUS

Docket Nos. CI75-122, CP76-238, RI75-112, RI77-57, and RI76-338.

[FR Doc. 78-19430 Filed 7-13-78; 8:45 am]

[6740-02]

Federal Energy Regulatory Commission

[Docket No. ER78-194]

CLEVELAND ELECTRIC ILLUMINATING CO.

Notice Changing Prehearing Conference Date

JUNE 29, 1978.

On June 16, 1978, Commission Staff Counsel filed a motion requesting that the prehearing conference scheduled by Commission Order issued June 14, 1978, be changed from July 10, 1978, to July 12, 1978. On June 20, 1978, the City of Cleveland, Ohio, intervenors in this proceeding, filed a motion requesting that the prehearing conference date be changed to August 10, 1978.

Upon consideration, notice is hereby given that the prehearing conference in this proceeding will commence on August 10, 1978, at 10 a.m., in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. All further procedural dates will be established by the Presiding Administrative Law Judge.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-19479 Filed 7-13-78; 8:45 am]

[6740-02]

[Docket No. CP78-382]

COLUMBIA GULF TRANSMISSION CO.

Application

JUNE 27, 1978.

Take notice that on June 19, 1978, Columbia Gulf Transmission Co. (Applicant), P.O. Box 683, Houston, Tex. 77001, filed in Docket No. CP78-382 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 3,000 Mcf of natural gas per day for Transcontinental Gas Pipe Line Corp. (Transco) pursuant to a transportation agreement between Applicant and Transco dated May 10, 1978, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it would receive the gas, which is produced in the Orange Grove/Humphreys Field, Terrebone Parish, La., at existing facilities of Applicant in Terrebone Parish, La. Applicant would transport such gas for Transco through Applicant's existing East Lateral and main-line systems and redeliver the gas to Transco through existing measuring and other facilities connecting the pipelines of Applicant and Transco in Evangeline Parish, La., it is said.

Applicant states that the volume of gas received by Applicant would be reduced prior to redelivery by the volumes of gas unaccounted for, losses or gains and/or fuel used in the facilities through which such gas is transported.

It is indicated that Transco would pay Applicant a monthly demand charge of 94 cents (at 15.025 psia) per Mcf of contract demand or such other charge as may be determined by the Commission in an appropriate proceeding.

The transportation service is proposed to commence upon initial deliveries of gas by Transco to Applicant and would continue for a primary term of three years from the date of first delivery and year to year thereafter unless terminated by either party upon one year's prior written notice, it is said.

Applicant states that the proposed transportation is in the public interest in that it would avoid unnecessary duplication of facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 19, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-19480 Filed 7-13-78; 8:45 am]

[6740-02]

[Docket No. ER78-452]

CONNECTICUT LIGHT & POWER CO.

Proposed Notice of Amendment to Transmission Agreement

JULY 5, 1978.

Take notice that on June 23, 1978, The Connecticut Light & Power Co. (CL&P) tendered for filing a proposed Amendment to Transmission Agreement (Amendment) dated April 21, 1978, between (1) CL&P, The Hartford Electric Light Co. (HELCO) and Western Massachusetts Electric Co. (WMECO) and (2) Westfield Gas & Electric Department (WGED).

CL&P states that WGED has executed contracts with the Holyoke Gas & Electric Department (HG&E) of Holyoke, Mass. for the purchase of power from HG&E's fossil steam unit No. 10 and HG&E's gas turbine generating unit No. 10 (the WGED Purchase) and also states that the Amendment provides for an increase in the amount to be transmitted for the period from May 1, 1978 to October 31, 1978 (The Period) from 1,000 kilowatts to 4,300 kilowatts.

CL&P states that WGED did not notify CL&P of its request for increasing transmission service over the Northeast Utilities (NU) system until a date which prevented the filing of this Amendment with the Commission more than thirty days prior to the proposed effective date.

In order to permit CL&P to make the necessary adjustment to the amount of capacity being transmitted over the NU system for WGED for the Period and to allow CL&P, HELCO and WMECO to benefit from the additional revenues involved, CL&P requests that the Commission, pursuant to section 35.11 of its regulations, waive the thirty-day notice period and permit the Amendment filed to become effective on May 1, 1978.

CL&P states that the monthly transmission charge is equal to one-twelfth of the estimated annual average unit cost of transmission service on the NU system determined in accordance with section 13.9 (Determination of Amount of Pool Transmission Facilities (PTF) Costs) of the New England Power Pool (NEPOOL) Agreement and the uniform rules adopted by the NEPOOL Executive Committee multiplied by the number of kilowatts of winter capability which WGED is entitled to receive.

HELCO and WMECO have filed certificates of concurrence in this docket.

CL&P states that copies of this rate schedule have been mailed or delivered to HELCO, Hartford, Conn., WMECO, West Springfield, Mass., and WGED, Westfield, Mass.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedures (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 10, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-19432 Filed 7-13-78; 8:45 am]

[5740-02]

[Docket Nos. RP77-7 and RP77-140]

CONSOLIDATED GAS SUPPLY CORP.

Notice of Informal Conference

JULY 5, 1978.

Take notice that an informal conference in the above-referenced proceeding will be held on July 10 and 11, 1978, commencing at 2 p.m. e.d.t., on July 10 at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. The conference is being convened in part pursuant to the agreement of the parties at an earlier conference and in part as a result of a request posed by the Public Service Commission of the State of New York.

Customers and other interested persons will be permitted to attend, but if such persons have not been permitted to intervene by order of the Commission, attendance will not be deemed to authorize intervention as a party in this proceeding.

All parties will be expected to come fully prepared to discuss all issues arising out of Consolidated's two rate increase filings which are at issue in these proceedings, and further to discuss the issues raised by New York's request relating to Consolidated's proposed switch from a volumetric to an energy basis for its billings.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-19431 Filed 7-13-78; 8:45 am]

[6740-02]

[Docket No. ER78-367]

INVESTIGATION INTO WHOLESALE POWER TRANSACTIONS DURING TIME OF FUEL INADEQUACIES

Modification, in Part, of Date To Respond to Data Request

JULY 12, 1978.

By letter dated June 16, 1978, an Office of Electric Power data request was transmitted to 74 jurisdictional electric utilities, with responses to be completed in duplicate and returned in 30 days.

Numerous requests for extensions of time in which to submit data, and for partial relief from submitting data have been filed.

Specific company requests for extensions of time and for relief from submitting data are denied. Substantial compliance by all parties is required by July 17, 1978. Those questions for which complete responses are not submitted on July 17, 1978, should be identified in a cover letter. To the extent that data is not submitted on July 17, 1978, all data should be submitted by August 16, 1978.

DANIEL C. LAMKE,
Officer of the Commission.

[FR Doc. 78-19621 Filed 7-13-78; 8:45 am]

[6740-02]

[Docket Nos. RI77-124, RI77-125, RI77-126, RI77-127, RI77-130, and RI77-135]

MAURICE L. BROWN CO.

Notice of Extension of Time

JUNE 30, 1978.

On June 20, 1978, The Maurice L. Brown Co. (Brown) filed a request for an extension of time to comply with Ordering Paragraph (E) of the Order issued June 6, 1978, in the captioned dockets. The request states that there are logistics problems in preparing and circulating for approval the amendment to the Gas Contract between Brown and United Gas Pipe Line Co. required by the June 6 Order.

Upon consideration, notice is hereby given that a 15-day extension of time is granted to and including July 21, 1978, within which The Maurice L. Brown Co. shall comply with Ordering Paragraph (E).

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-19481 Filed 7-13-78; 8:45 am]

[6740-02]

[Docket Nos. RP76-136 and RP77-26]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Order Granting in Part Motion for Reconsideration, Accepting Settlement Agreement in Part, and Remanding for Procedures on Contested Zoning Issue

On May 22, 1978, the presiding officer certified to the Commission a motion by the parties for reconsideration of the Commission's April 26, 1978 order remanding for further hearing procedures two contested issues.[1] The Commission ordered remand because there was insufficient evidence on which to base a reasoned decision on these two issues.

In the course of a prehearing conference held on May 17, 1978, the parties stated that they wish the Commission either to approve the entire settlement or, in the alternative, to accept the settlement with the exception of the contested zone differential issue, and to sever and remand the zone differential issue for a hearing *de novo*.[2] Article X of the settlement agreement sets forth the alternate procedure discussed above. The settlement further provides that if the zone differential issue is remanded, all parties are free to argue what effective date should be prescribed for the zone methodology ultimately determined by the Commission to be just and reasonable.[3] Furthermore, if the zone differential issue is remanded, refunds for the locked-in period shall be made on an "as-billed" historical zone differential basis within 60 days after the settlement agreement is acted upon by the Commission.[4] Anticipating a remand of the zoning issue, the presiding officer has established a schedule for further procedures on this issue.

The Commission hereby adopts the second alternative.[5] The record still lacks sufficient development and focus with respect to Article X, Paragraph 1 of the settlement to enable us to reach a reasoned decision upon the zoning

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[1]The two contested issues involved zoning (Article X, Paragraph 1, of the agreement) and the interruptible transportation rate (Article VII). During the conference, the party objecting to Article VII withdrew its objection, leaving only zoning as a contested issue.

[2]Tr. 715-722. This latter alternative procedure was specifically provided for in Article X, Paragraph 2. Comments supporting this alternative procedure were filed by the Public Service Commission of New York, while Transco and Elizabethtown Gas Co. requested this Commission to approve the agreement in their comments.

[3]Settlement Agreement, Article X, paragraph 2.

[4]Tr. 720. See also Article II of the Settlement Agreement.

[5]The parties agreed not to oppose this alternative, if chosen by the Commission. Tr. 740.

issue. We find that a full hearing and an initial decision on this issue is desirable in the public interest. Additionally, it is in the public interest to accept and approve the settlement agreement, with the exception of Article X, Paragraph 1. Accordingly, we hereby approve the settlement, except Article X, Paragraph 1. We hereby remand to the presiding officer the contested zone differential issue for a hearing *de novo* and an initial decision on that issue. We note further that Article XI of the proposed Settlement Agreement provides for carrying charges for the balances (positive or negative) accumulated in the deferred purchased gas cost account. We shall approve this article subject to the condition that the tariff sheets incorporating this provision be subject to change to reflect any changes that may be required by order issued in Docket No. R-406[6] or any other rulemaking proceeding dealing with the carrying charge issue. This condition shall be applicable no matter when such a change might occur.

The Commission orders:

(A) The settlement agreement certified to the Commission on November 3, 1978 is hereby found just and reasonable, and is approved, with the exception of Article X, Paragraph 1, as conditioned below.

(B) The contested zone differential issue is hereby severed and remanded to the presiding officer for a hearing *de novo* and initial decision. The presiding officer may establish further procedural scheduling as he deems appropriate.

(C) Article XI of the settlement agreement is approved subject to the condition that the tariff sheets providing for carrying charges on the deferred purchased gas cost account be subject to change to reflect any changes that may be required by order issued in Docket No. R-406 or any other rulemaking proceeding dealing with the carrying charge issue. This condition shall be applicable no matter when such a change might occur.

(D) Transcontinental Gas Pipe Line Corporation shall file revised rates, revised tariff sheets, and make refunds in accordance with the terms of the settlement agreement, as approved.

(E) Within thirty (30) days after making the refunds required by Paragraph (D), shall file with the Commission in writing and under oath, a report as to the amount of refunds made and its method for computing same and shall serve a copy of its refund report on interested State public service commissions.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-19482 Filed 7-13-78; 8:45 am]

[6740-02]

[Docket No. EL78-29]

VILLAGE OF PENN YAN, N.Y

Notice of Extension of Time

JUNE 29, 1978.

On June 26, 1978, the New York State Electric & Gas Corp. filed a telegraphic request for an extension of time for filing petitions to intervene and protests to the petition for a declaratory order filed May 25, 1978, by the Village of Penn Yan, New York, and noticed June 13, 1978, in the captioned docket. The request states that the Village of Penn Yan and the New York Power Authority have no objection to the extension.

Upon consideration, notice is hereby given that an extension of time is granted to and including July 21, 1978, for filing petitions to intervene and protests in this proceeding.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-19483 Filed 7-13-78; 8:45 am]

[3128-01]

Hearings and Appeals Office

ISSUANCE OF DECISIONS AND ORDERS

Week of April 17 Through April 21, 1978

Notice is hereby given that during the week of April 17 through April 21, 1978, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions which were dismissed by the Office of Hearings and Appeals and the basis for the dismissal.

APPEALS

Donelan, Cleary, Wood & Maser, Washington, D.C., DFA-0152, Freedom of Information

Donelan, Cleary, Wood & Maser filed an appeal from an order which the information access officer of the DOE issued to the firm of January 26, 1978. In that order, the information access officer refused to release portions of certain documents requested by Donelan on the grounds that the portions withheld were exempt from the mandatory disclosure requirement of the Freedom of Information Act pursuant to 5 U.S.C. 552(b)(4). In its appeal, Donelan contended that the information access officer had failed to state with sufficient particularity the grounds upon which the material involved was withheld. The DOE rejected this contention and determined that the information access officer had correctly found that the release of the material in question could cause competitive injury to the firm which had submitted the material to the DOE. The DOE found that the information access officer did in fact explain in sufficient detail the reasons why that firm would experience a competitive injury if the material were released to the public. Accordingly, Donelan's appeal was denied.

Marathon Oil Co., Murphy Oil Corp., Washington, D.C., DFA-0160, DFA-0161, freedom of information

Marathon Oil Co. and Murphy Oil Corp. filed appeals from partial denials by the information access officer of requests for information which the firms had submitted under the Freedom of Information Act. In response to those requests, the information access officer released 9 documents and portions of 43 others, but also withheld 42 documents which he identified as being within the scope of the firms' requests. Access to the documents or portions of documents at issue was denied on the grounds that they were exempt from mandatory public disclosure pursuant to 5 U.S.C. 552(b)(4) ("exemption 4") because they contained confidential commercial information or pursuant to 5 U.S.C. 552(b)(5) ("exemption 5") because they were intraagency memoranda. Because their information requests were similar and the information access officer withheld identical documents from each firm, these appeals were consolidated for resolution in a single proceeding.

In considering the appeals, the DOE observed that the propriety of the release of 24 of the documents which were withheld pursuant to exemption 5 had been considered in a previous appellate proceeding and that the determination made in that proceeding was dispositive in this case. With respect to the remaining 18 documents which were withheld pursuant to exemption 5, the DOE found that in general these documents were predecisional in nature and were the product of the deliberative and consultative efforts of DOE personnel. The release of these documents would not be in the public interest because it would tend to inhibit the free flow of information and opinions within the agency. It therefore held that those documents were properly withheld by the information access officer. However, the DOE also found that seven of the documents contained reasonably segregable factual material which was not exempt from disclosure and it therefore directed that such material be released. The DOE indicated that the information which was withheld pursuant to exemption 4 appeared to be the type of information described in 18 U.S.C. 1905, and hence its disclosure was prohibited by that law notwithstanding considerations of the public interest in disclosure. The DOE also found that the information access officer had adequately described the documents which were withheld and had adequately stated the grounds for invoking the statutory exemptions.

Finally, the DOE was convinced by the appellants' argument that certain documents within the scope of their information requests were apparently overlooked by the information access officer. The DOE therefore directed the information access officer

[6] *Purchased Gas Cost Adjustment Provision In Natural Gas Pipeline Companies' FPC Gas Tariffs*, Docket No. R-406, Notice of Proposed Rulemaking, issued on May 10, 1976.

to review the documents in question and conduct a further search within the DOE for additional documents which are within the scope of the request. The Marathon and Murphy appeals were therefore granted in part and these matters were remanded for further proceedings.

Leonard E. Belcher, Inc., Alexandria, Va., DFA-0159, freedom of information

Leonard E. Belcher, Inc. appealed from a partial denial by the DOE information access officer of a request for information which the firm had submitted under the Freedom of Information Act. In its initial request, Belcher sought access to a number of records concerning an appeal of a remedial order which the firm had filed with the Federal Energy Administration on August 24, 1977. Belcher also requested information regarding the personnel and internal operating procedures of the Office of Hearings and Appeals and its predecessors. In response to Belcher's request, the information access officer released five documents in their entirety, but withheld portions of a sixth document on the ground that that material was part of an intraagency memorandum which was recommendatory in nature and therefore exempt from mandatory disclosure under the provisions of 5 U.S.C. 552(b)(5) ("exemption 5"). In considering Belcher's appeal, the Department of Energy determined that some of the deleted material consisted of opinions or recommendations of DOE employees which were predecisional in nature. The remaining material, the DOE determined, consisted of communications between Government offficials and their attorneys which are protected by the attorney-client privilege. The DOE therefore concluded that the material withheld was properly classified as exempt from mandatory disclosure under exemption 5. The DOE also conducted a new search of its files for additional documents responsive to Belcher's information request. That search produced a document entitled "Office of Exceptions and Appeals Office Procedures Manual" which was released to Belcher. In all other respects the firm's appeal was denied.

Ruthven, Inc., Russell County, Kans., DRA-0040, crude oil

Ruthven, Inc. appealed from a remedial order that had been issued to it by DOE region VII on November 2, 1977. In the remedial order, the DOE found that during the period December 1, 1973 through December 31, 1975, Ruthven had sold the crude oil produced from the Ben Rein lease at unlawful price levels. The remedial order therefore directed Ruthven to refund the overcharges plus accrued interest to the purchaser of that crude oil. In its appeal, Ruthven contended that rulings 1974-29 and 1975-12 were improperly issued and should not be applied to the Ben Rein lease in determining the number of wells which should be utilized to calculate the average daily production per well for the property. In considering the appeal, the DOE observed that in view of the interpretative nature of rulings 1974-29 and 1975-12, they are specifically exempt from the notice and hearing requirements of the Administrative Procedures Act. The DOE also rejected the firm's assertion that ruling 1975-12 is arbitrary and capricious because it unreasonably distinguishes between a well which produces crude oil from independent formations through multiple tubing strings, i.e. a multiple completion well, and one which produces through a single tubing string. In this regard, the DOE noted that the advantageous treatment accorded to multiple completion wells was intended to confer a further benefit upon those crude oil producers whose ability to produce additional quantities of crude oil is a result of a capital investment that significantly exceeds the capital required to construct most wells. However, the DOE concluded that the failure of ruling 1975-12 to encompass all wells which represent capital investments that exceed the norm does not constitute a proper basis for concluding that the ruling is arbitrary and capricious. The DOE also held that the Kansas Corporation Commission's classification of one of the wells on the Ben Rein lease as two wells does not form a basis for concluding that this well should also be considered as two wells for purposes of the DOE regulatory program. Finally, the DOE held that the provisions of the remedial order issued to Ruthven should be enforced notwithstanding a Kansas district court decision that ruling 1974-29 is invalid. The DOE therefore denied the Ruthven appeal.

Texaco, Inc., Westchester, N.Y., DFA-0162, freedom of information

Texaco, Inc. appealed from a partial denial by the DOE information access officer of a request for information submitted under the Freedom of Information Act. In its request, Texaco sought the disclosure of documents relating to the DOE's definition of the term "property." The information access officer released six documents which were within the scope of Texaco's request. He also identified 11 other documents which were responsive to Texaco's request, but he declined to release them on the grounds that the documents were exempt from mandatory public disclosure under section 552(b)(5) of the act because they were recommendatory in nature and consisted of opinions of Government officials which are part of the process by which governmental decisions and policies are formulated. On appeal, the DOE concluded that this determination was correct, but it also found that certain factual material contained in one document was segregable from the policy analysis and recommendatory portions of the document. The Texaco appeal was therefore granted in part and the release of the segregable factual material was ordered.

Union Pacific Corp., Fort Worth, Tex., DPI-0004, crude oil and unfinished oils

The Union Pacific Corp. filed an appeal of an award of license fee-exempt authority under 10 CFR 213.12 to its subsidiary, the Champlin Petroleum Co., by the Office of Oil Imports. On appeal, Union sought an increase in the amount of crude oil and unfinished oils which Champlin could import on a fee-exempt basis for the 1977-78 allocation period. Union stated that, in the application which it filed on behalf of Champlin, it had inadvertently included incorrect data. According to Unin, it notified the Office of Oil Imports of the error on a timely basis, but the Office of Oil Imports used the original, erroneous data in calculating Champlin's fee-exempt authority under section 213.12. As a result, Union claimed that Champlin had received insufficient fee-exempt import authority. In considering Union's appeal, the DOE noted that the Office of Oil Imports agreed that an administrative error had occurred. In view of this situation, the DOE concluded that Union's appeal should be granted and that Champlin should be permitted to import an additional 1,120,251 barrels of crude oil and unfinished oils on a fee-exempt basis during the 12-month period following the date of the decision.

PETITION FOR SPECIAL REDRESS

Romaco, Inc., Montgomery, Ala., DSG-0015, DES-0051, motor gasoline

Romaco, Inc., filed a petition for Special Redress which, if granted, would have resulted in the recission of a Special Report Order which DOE Region IV issued to the firm on December 22, 1977. Romaco also requested a stay of the provisions of the Special Report Order pending a final determination on its Petition. In considering the Romaco Petition, the DOE noted that section 210.91(d) of the DOE Regulations establishes the criteria which are to be applied by the Office of Hearings and Appeals in its review of a petition seeking recission of a Special Report Order, and provides that a petition be considered on its merits only if a preliminary review indicates that a reasonable probability exists that the petitioner be considered on its merits only if a preliminary review indicates that a reasonable probability exists that the petitioner will be able to satisfy those criteria. See 41 FR 55322 (December 20, 1976). Upon reviewing the contentions which Romaco advanced in its Petition, the DOE concluded that it could show circumstances so exceptional that an immediate review was warranted to correct substantial errors of law, to prevent substanial injury to legal rights, or to cure a gross abuse of administrative discretion. In its Petition, Romaco argued that the recordkeeping requirements of 10 CFR 210.92 were legal invalid because the FEA never received approval of that regulation from the General Accounting Office (GAO). However, the DOE observed that the GAO Regulations in question, 4 CFR Part 10, do not apply to the recordkeeping requirements set forth in 10 CFR 210.92. Romaco also argued that section 210.92 does not require it to maintain records of the type of information requested in the Special Report Order. However, the DOE found that since the Special Report Order only required Romaco to submit information which was necessary to disclose the manner in which the firm had complied with the applicable regulatory requirements, the information sought was of the type which a firm must maintain in order to comply with the provisions of section 210.92. The DOE stated that the fact that Romaco may be required to compile a substantial amount of information in order to comply with the Special Report Order as a result of its failure in the past to comply with the recordkeeping requirements of section 210.92 did not warrant a finding that the Order would be unduly burdensome. Finally, the DOE rejected Romaco's argument that the Special Report Order violated the Fifth Amendment privilege against self-incrimination because that privilege cannot be invoked by a corporation or a corporate official. The DOE also observed that the privilege against self-incrimination does not extend to the Production of records which are required to be kept by-law. Accordingly, the Romaco Petition was dismissed and its Application or stay was denied.

REQUESTS FOR EXCEPTION

Cologne Production Co., San Antonio, Tex., DXE-0857, Crude Oil

Cologne Production Co. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception, if granted, would result in the extension of the exception relief previously granted and would permit Cologne to continue to sell at upper tier ceiling prices a portion of the crude oil produced from the Algoa No. 4-2 Unit and the Algoa No. 6 Unit which are located in Galveston County, Tex. *Cologne Production Co.*, 1 DOE Par. 81,056 (January 19, 1978). In considering the exception request, the DOE found that Cologne continued to incur increased expenses in connection with the operation of the two units and that, in the absence of exception relief, Cologne would lack an economic incentive to produce crude oil from the Algoa Field. Therefore, on the basis of the operating data which Cologne submitted for the preceeding 6 months, Cologne was granted exception relief which permits the firm to sell at upper tier ceiling prices 100 percent of the crude oil produced for the benefit of the working interest owners from the Algoa No. 4-2 Unit and 54.07 percent of the crude oil produced for the benefit of the working interest owners from the Algoa No. 6 Unit for an additional 6-month period.

Great Southern Oil & Gas Co., Inc., La Fayette, La., DXE-0523, Crude Oil

Great Southern Oil & Gas Co., Inc. filed an Application from Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception, if granted, would result in the extension of the exception relief previously granted to Great Southern and would permit the firm to sell a portion of the crude oil produced from the Castille RA SUA Brezua No. 1 Well at upper tier ceiling prices. In considering the Great Southern exception request, the DOE found that Great Southern continued to incure increased operating expenses at the Castille well and that, in the absence of exception relief, the working interest owners would lack an economic incentive to produce crude oil from the property. In view of this determination and on the basis of the operating data which Great Southern submitted for the most recently completed fiscal period, the DOE concluded that Great Southern should be permitted to sell at upper tier ceiling prices 67.94 percent of the crude oil produced from the Castille Well for the benefit of the working interest owners.

Allen K. Trobaugh, Midland, Tex., DXE-0908, Crude Oil

Allen K. Trobaugh filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception, if granted, would result in an extension of exception relief previously granted to Trobaugh and would permit him to continue to sell at upper tier ceiling prices a portion of the crude oil produced from the No. 1 Well on the Bailey Lease which is located in Hockley County, Tex. In considering the exception request, the DOE found that Trobaugh continues to incur increased operating expenses in connection with the No. 1 Well and that in the absence of exception relief Trobaugh would lack an economic incentive to produce crude oil from the well. In view of this situation and on the basis of the operating data which Trobaugh submitted for the preceding 6 months, the DOE permitted the working interest owners to sell at upper tier ceiling prices 94.13 percent of the crude oil produced from the well for their benefit.

INTERLOCUTORY ORDERS

C & H Refinery, Inc., Lusk, Wyo., DEH-0001, Crude Oil

C & H Refinery, Inc. filed a Motion for Evidentiary Hearing in connection with a Statement of Objections to a Proposed Decision and Order which the DOE issued to the firm. In the Proposed Decision, the DOE concluded that the firm's Application for Exception from the provisions of 10 CFR 211.67(e)(2) (the entitlements program) should be denied. C & H stated in its Motion for Evidentiary Hearing that it wished to present testimonial evidence in support of its assertions that (i) it is conducting a bona fide refinery expansion program; (ii) its actions to date have had a legitimate economic basis; and (iii) expansion of its refinery would be in the national interest. The DOE stated that in determining whether a Motion for Evidentiary Hearing should be granted it would consider the probative value of the evidence which the firm intends to present at the evidentiary hearing, the time and expense involved in holding the evidentiary hearing, and the probability that the evidence can be satisfactorily presented and considered through a process other than an evidentiary hearing. In applying these principles to the C & H motion, the DOE found that evidence supporting the firm's first two assertions could be presented in written form and that the oral testimony of company officials was therefore unnecessary. With respect to its third assertion, C & H stated in its submission that it wished to call as a witness the Administrator of the Economic Regulatory Administration. However, the DOE held that even if the Administrator were involved in the decisionmaking process, it is generally not appropriate to permit a firm to probe the thought processes of adjudicatory decisionmakers. The DOE also held that a firm should not be permitted to compel the testimony of a high agency official in his regulatory capacity unless it shows that (i) the information which it wishes to elicit is within the peculiar expertise of the agency official; (ii) the firm has no alternative means of obtaining the information; and (iii) the information is necessary to the successful presentation of the firm's position in the proceeding. The DOE held that C & H failed to make such a showing in its Motion for Evidentiary Hearing. However, the DOE did state that, to the extent it finds that the Proposed Decision and Order fails to specify the factual and legal basis for the material findings made, the DOE will either indicate the factual or legal basis for those findings and afford C & H an opportunity to respond to them prior to the issuance of a final Decision and Order, or it will disregard those findings in issuing a final decision oh the C & H exception request. The C & H Motion for Evidentiary Hearing was accordingly denied.

Milltown Skelgas, Inc., Minneapolis, Minn., DRD-0009, propane

Milltown Skelgas, Inc. filed a Motion for Discovery in connection with a Statement of Objections to a Proposed Remedial Order which DOE Region V issued to the firm. In its Motion for Discovery, Milltown sought access to certain DOE documents concerning the pricing practices of its competitors. In the alternative, the firm requested permission to depose representatives of its competitors. In considering the Milltown Motion, the DOE concluded that since the pricing practices of other firms in the market have no bearing upon the issue of Milltown's adherence to the DOE pricing regulations, the information which Milltown sought to obtain through discovery was not relevant to its Statement of Objections. The Milltown Motion for Discovery was accordingly denied.

REQUESTS FOR EXCEPTION RECEIVED FROM NATURAL GAS PROCESSORS

The Office of Hearings and Appeals of the Department of Energy has issued decisions and orders granting exception relief from the provisions of 10 CFR 212.165 to the natural gas processors listed below. The exception relief permits the firms involved to increase the prices of the production of the gas plants listed below to reflect certain nonproduct cost increases:

Company	Case No.	Plant	Location	Amount of price increase (per gallon)
Arkansas Louisiana Gas Co	DXE-0665	Bistineau	Webster Parish, La	$0.0147
	DXE-0666	Waskom	Harrison, Tex	.0257
Beacon Gasoline Co	DXE-0556	Minden	Webster Parish, La	.1901
Cities Service Co	DXE-0780	Ambrose	Kay, Okla	.0134
	DXE-0781	Bryans Mill	Cass, Tex	.0227
	DXE-0782	Camrick	Beaver, Okla	.0086
	DXE-0783	Chico	Wise, Tex	.0141
	DXE-0784	Crowley	Acadia Parish, La	.0249
	DXE-0785	Dollarhide	Andrews, Tex	.0154
	DXE-0786	East Texas	Gregg, Tex	.0165
	DXE-0787	Elmwood	Beaver, Okla	.0204
	DXE-0788	Indian Basin	Eddy, N. Mex	.0073
	DXE-0789	Lapeyrouse	Terrebonne Parish, La	.0195
	DXE-0790	Lefors	Gray, Tex	.0159
	DXE-0791	Maysville	Garvin, Okla	.0135

Company	Case No.	Plant	Location	Amount of price increase (per gallon)
Cities Service Co	DXE-0792	Murdock	Texas, Okla	(1)
	DXE-0793	North Cowden	Ector, Tex	.0156
	DXE-0794	Pampa	Gray, Tex	.0715
	DXE-0795	Price	Rusk, Tex	.0717
	DXE-0796	Roberts Ranch	Midland, Tex	.0101
	DXE-0797	Rodman	Garfield, Okla	.0173
	DXE-0798	San Antonio Bay	Calhoun, Tex	.0607
	DXE-0799	Stonewall	Stonewall, Tex	.0226
	DXE-0800	Waco	McLennan, Tex	.0267
	DXE-0801	West Seminole	Gaines, Tex	.0225
	DXE-0802	Wichita	Sedgwick, Kans	.0063
Coline Gasoline Corp	DXE-0516	Rincon	Ventura, Calif	.0473
El Paso Natural Gas Co	DXE-0557	Jal	Lea, N. Mex	.0154
	DXE-0558	San Juan	San Juan, N. Mex	.0143
Enkay Corp	DXE-0544	East Texas	Panola, Tex	.0226
Estate of George H. Coates	DXE-0686	Jay Simons	Starr, Tex	.06711
Getty Oil Co	DXE-0688	Bastian Bay	Plaquemines Parish, La	.0429
	DXE-0689	Eunice	Lea, N. Mex	.0108
	DXE-0690	Fuller	Scurry, Tex	.0055
	DXE-0691	Hollywood	Terrebonne Parish, La	.0175
	DXE-0692	Houma	Terrebonne Parish, La	.0056
	DXE-0693	Schafer	Gray-Carson, Tex	.0241
	DXE-0694	Spearman	Ochiltree, Tex	.0051
	DXE-0695	Vilma	Stephens, Okla	.0127
	DXE-0696	Venice	Plaquemines Parish, La	.0138
	DXE-0697	Vermilion	Vermilion Parish, La	.1317
	DXE-0803	Dollarhide	Andrews, Tex	(1)
	DXE-0804	Stevens-Calidon	Kern, Calif	.0058
Gulf Oil Corp	DXE-0560	Adena	Morgan, Colo	.0803
	DXE-0561	Bluebell	Duchesne, Utah	.0405
	DXE-0562	Breckenridge	Stephens, Tex	.0348
	DXE-0563	Camrick	Beaver, Okla	.0090
	DXE-0564	Chesterville	Colorado, Tex	.0282
	DXE-0565	Como	Hopkins, Tex	.0455
	DXE-0566	Delhi	Richland Parish, La	.0135
	DXE-0567	Encinal	San Patricio, Tex	.0343
	DXE-0568	Enville	Love, Okla	.0116
	DXE-0569	Eunice	Lea, N. Mex	.0087
	DXE-0570	Fannett	Jefferson, Tex	.0282
	DXE-0571	Fashing	Atoscosa, Tex	.0148
	DXE-0572	Gladewater	Gregg, Tex	.0204
	DXE-0573	Headlee	Andrews, Tex	.0123
	DXE-0574	Kalkaska	Kalkaska, Mich	.0310
	DXE-0575	Krotz Springs	St. Landry Parish, La	.0102
	DXE-0576	Lake Washington	Plaquemines Parish, La	.0135
	DXE-0577	Maysville	Garvin, Okla	.0170
	DXE-0578	Mermentau	Arcadia Parish, La	.0347
	DXE-0579	Monahans	Ward, Tex	.0139
	DXE-0580	Monument	Lea, N. Mex	.0134
	DXE-0581	Moores Orchard	Fort Bend, Tex	.0112
	DXE-0582	North Port Neches	Orange, Tex	.0113
	DXE-0583	Saunders	Lea, N. Mex	.0141
	DXE-0584	Shackelford	Shackelford, Tex	.0414
	DXE-0585	South Fullerton	Andrews, Tex	.0131
	DXE-0586	Spear	Gregg, Tex	.0272
	DXE-0587	Vada	Lea, N. Mex	.0266
	DXE-0588	Waddell	Crane, Tex	.0123
	DXE-0589	Worsham	Ward, Tex	.0109
	DXE-0590	Yates	Pecos, Tex	.0225
H. W. Bass & Sons, Inc	DXE-0543	Walnut Bend	Grayson, Tex	.0378
Hewit & Dougherty	DXE-0546	Roche	Refugio, Tex	.04067
International Telephone & Telegraph Co	DXE-0921	Crescent	Logan, Okla	.06295
Marathon Oil Co	DXE-0551	Rock River	Carbon, Wyo	.5225
	DXE-0552	Welder	San Patricio, Tex	.1575
	DXE-0553	West Forelands	Cook Inlet, Alaska	.0343
	DXE-0554	West Sidney	Cheyenne, Nebr	.0575
Monsanto Co	DXE-0727	Adena	Morgan, Colo	.0962
	DXE-0728	Como	Hopkins, Tex	.0471
	DXE-0729	Diamond "M"	Scurry, Tex	.0164
	DXE-0730	Dollarhide	Andrews, Tex	.0250
	DXE-0731	Gillette	Campbell, Wyo	.0417
	DXE-0732	Pledger	Brazoria, Tex	(1)
	DXE-0733	Spivey	Harper, Kans	.0321
Northern Natural Gas Co	DXE-0734	Nos. 1 and 2	Martin, Tex	.02743
Phillips Petroleum Co	DXE-0811	Andrews	Andrews, Tex	.0275
	DXE-0812	Benedum	Upton, Tex	.0334
	DXE-0813	Bradley	Garvin, Okla	.0363
	DXE-0814	Crane	Crane, Tex	.0159
	DXE-0815	Dumas	Moore, Tex	.0240
	DXE-0816	Edmond	Oklahoma, Okla	.0583
	DXE-0817	Gray	Gray, Tex	.0297

Company	Case No.	Plant	Location	Amount of price increase (per gallon)
Phillips Petroleum Co	DXE-0818	Hobbs	Lea, Tex	.0101
	DXE-0819	Lee	do	.0110
	DXE-0820	Lovington	do	.0394
	DXE-0821	North	Gray, Tex	.0276
	DXE-0822	Oklahoma	Oklahoma, Okla	.0493
	DXE-0823	Sprayberry	Midland, Tex	.0090
	DXE-0824	Tunstill	Reeves, Tex	.0458
	DXE-0825	Vermilion	Vermilion Parish, La	.0264
	DXE-0826	Henderson	Rusk, Tex	.0248
Shell Oil Co	DXE-0591	Bayou Goula	Iberville Parish, La	.0533
	DXE-0592	Camargo	Dewey, Okla	.0186
	DXE-0593	Chalkley	Cameron Parish, La	.0578
	DXE-0594	Enville	Love, Okla	.0128
	DXE-0595	Fashing	Atascosa, Tex	.0111
	DXE-0596	Halley	Winkler, Tex	(1)
	DXE-0597	KNDU	Kings, Calif	.0331
	DXE-0598	Lirette	Terrebonne Parish, La	.0418
	DXE-0599	Mermentau	Acadia Parish, La	.0228
	DXE-0600	O'Keene	Blaine, Okla	.0337
	DXE-0601	Person	Karnes, Tex	(1)
	DXE-0602	Prentice	Yoakum, Tex	.0157
	DXE-0603	Red Fish Bay	Nueces, Tex	.0302
	DXE-0604	Sea Robin	Vermilion Parish, La	.0068
	DXE-0605	Seiling	Dewey, Okla	.0366
	DXE-0606	Timbalier Bay	Terrebonne Parish, La	(1)
	DXE-0607	TXL	Ector, Tex	.0120
	DXE-0608	Van	Van Zandt, Tex	.0229
	DXE-0609	Weeks Island	Iberia Parish, La	.0081
	DXE-0610	West Seminole	Gaines, Tex	.0349
Signal Petroleum	DXE-0735	Lake Washington	Plaquemines Parish, La	.0162
Standard Oil	DXE-0644	Beaver Creek	Freemont, Wyo	.0318
	DXE-0645	Burnell-North Pettus	Bee, Tex	.0309
	DXE-0646	Calumet	Canadian, Okla	.0056
	DXE-0647	Cotton Valley	Webster Parish, La	.0191
	DXE-0648	Edgwood	Van Zandt, Tex	.0275
	DXE-0649	Luby	Nueces, Tex	.0356
	DXE-0650	Old Ocean	Brazoria, Tex	.0179
	DXE-0651	Patterson	St. Mary's Parish, La	.0067
	DXE-0652	South Gillock	Galveston, Tex	.0210
	DXE-0653	South Pecan	Cameron Parish, La	.0246
	DXE-0654	Thibodaux	La Fourche Parish, La	.0296
	DXE-0655	Vermilion	Vermilion Parish, La	.0206
	DXE-0656	West Bastian	Plaquemines Parish, La	.0142
	DXE-0827	Elk Basin	Park, Wyo	.0187
	DXE-0828	Levelland	Hockely, Tex	.0134
	DXE-0829	Midland Farms	Andrews, Tex	.0271
	DXE-0830	Monahans	Winkler, Tex	.0428
	DXE-0831	North Cowden	Ector, Tex	.0138
	DXE-0832	Peoria	Arapahoe, Colo	.0206
	DXE-0833	Slaughter	Hockley, Tex	.0089
	DXE-0834	South Manchester	Calcasieu Parish, La	.0284
	DXE-0835	Toca	St. Bernard Parish, La	.0050
Tenneco Oil Co	DXE-0874	Chesterville	Colorado, Tex	.0344
	DXE-0875	La Porte	Harris, Tex	.0087
	DXE-0876	Lake Bouef	La Fourche Parish, La	.0094
	DXE-0877	Leabo	Matagorda, Tex	.0724
	DXE-0878	Mayfield	Kleberg, Tex	.1066
	DXE-0879	Mermentau	Acadia Parish, La	.0075
	DXE-0880	Normanna	Bee, Tex	.0227
	DXE-0881	Pearce	Aransas, Tex	.0216
	DXE-0882	Prentice	Yoakum, Tex	.0210
	DXE-0883	South Fullerton	Andrews, Tex	.0181
	DXE-0884	Stephens	Claiborne Parish, La	.0219
	DXE-0885	Ward	Hidalgo, Tex	.0185
Texaco, Inc	DXE-0736	Como	Hopkins, Tex	(1)
	DXE-0737	Enville	Love, Okla	.0071
	DXE-0738	Garvin County	Garvin, Okla	.0085
	DXE-0739	Handy	Grayson, Tex	.0382
	DXE-0740	Luby	Nueces, Tex	.0262
	DXE-0741	New Hope	Franklin, Tex	.0700
	DXE-0742	Roos South Campana	McMullen, Tex	.2540
	DXE-0743	South Lake Arthur	Jefferson Davis Parish, La	.0110
	DXE-0744	South Kermit	Winkler, Tex	.0270
	DXE-0745	Tijerina	Jim Wells, Tex	.0268
	DXE-0746	TXL	Ector, Tex	.0225
	DXE-0747	Van	Van Zandt, Tex	.0237
	DXE-0897	Indian Basin	Eddy, N. Mex	(1)
	DXE-0898	Kettleman Hills	Kings, Calif	.0496
	DXE-0899	Shiells Canyon	Ventura, Calif	.0393
Wel-Gas, Inc., of Texas	DXE-0555	Possum Kingdom	Stephens, Tex	.09785

(1) Denied.

DISMISSALS

The following submissions were dismissed on the grounds that the relief requested was no longer necessary:

Florida Gas Co., Houston, Tex., DES-0047
Texas Oil & Gas Corp., Dallas, Tex., FEE-4855

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1 p.m. and 5 p.m., e.d.t., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: June 30, 1978.

MELVIN GOLDSTEIN,
Director,
Office of Hearings and Appeals.

[FR Doc. 78-19353 Filed 7-13-78; 8:45 am]

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 928-4; OPP—180198]

MINNESOTA DEPARTMENT OF AGRICULTURE

Issuance of Specific Exemption To Use Benomyl To Control Fungus on Cabbage, Cauliflower, Broccoli, and Brussels Sprout Seeds

The Environmental Protection Agency (EPA) has granted a specific exemption to the Minnesota Department of Agriculture (hereafter referred to as the "Applicant") to use benomyl on commercial cabbage, cauliflower, broccoli, and brussels sprout seeds to control infestations of the fungus *Phoma lingam*, which causes the plant disease called "blackleg". This exemption was granted in accordance with, and is subject to, the provisions of 40 CFR Part 166, which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

This notice contains a summary of certain information required by regulation to be included in the notice. For more detailed information, interested parties are referred to the application on file with the Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M Street SW., Room E-315, Washington, D.C. 20460.

According to the Applicant, *Phoma lingam*, the causal agent of blackleg disease in these crucifers (plants of the family *Cruciferae*), is frequently present on seed, but epidemic outbreaks depend on the weather conditions in seed growing, transplant and food production areas. The organism, which may remain viable on plant debris for up to four (4) years, can be introduced into new fields by seed transmission. In 1973, a disastrous outbreak of cabbage blackleg occurred in eastern growing States. The organism causing the outbreak was traced to seed grown in western Washington. During 1973, damage caused by blackleg and black rot was estimated at ten (10) percent of the Nation's crop.

The Applicant stated that the seed to be treated was grown in Washington and transported to Minnesota for treatment. Although the State of Washington was granted a specific exemption on December 21, 1977 to apply benomyl in a crucifer seed treatment program, the Applicant claimed that one of the Washington seed producer companies does not possess seed treatment equipment in Washington and consequently shipped the seed to its facility in Minnesota where treatment equipment is located. Most of the treated seed will be shipped back to Washington for planting, but some seed may be sold to other States. According to the Applicant, the seed is valued at $25 per pound and the commercial crop to be grown from the seed is valued at between $200 to $600 per acre, depending on growing conditions; the seeds will be unmarketable if not treated.

This specific exemption requested treatment of up to 20,000 pounds of crucifer seed; treatment will be dependent on confirmation of the presence of the organism. Benomyl (Benlate 50 percent Wettable Powder; EPA Reg. No. 352-354) will be applied at the rate of eight ounces Benlate formulation in sufficient water for seed coverage per hundred pounds of seed. The Applicant stated that other pesticides and cultural practices have been unsuccessful in controlling the disease. A single Benlate application will be made on seed produced in 1977 for the 1978 commercial acreage; personnel of seed companies or seed contractors will make the applications.

It should be noted that a rebuttable presumption against registration of pesticide products containing benomyl was published on December 6, 1977 (42 FR 61788); however, no decision has yet been made by EPA as to appropriate regulatory action in this matter.

After reviewing the application and other available information, EPA has determined that: (a) A pest outbreak of the fungus *Phoma lingam* has occurred; (b) there is no pesticide presently registered and available for use to control the fungus in Minnesota; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the fungus is not controlled; and (e) the time available for action to mitigate the problem posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until July 1, 1978, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. A benomyl product, Benlate 50 percent Wettable Powder (EPA Reg. 352-354), will be used;
2. Benomyl will be applied at a maximum rate of 8 ounces of the product (4 ounces active ingredients) in sufficient water to treat one hundred (100) pounds of seeds;
3. Each seed lot may receive no more than a single application of benomyl;
4. Applicaion of benomyl will be restricted to seeds which are determined to be infected or to seeds from areas where *Phoma lingam* is known to be present;
5. A maximum of 20,000 pounds of seeds may be treated;
6. Treated seeds will not be used for food, feed, or any other use except planting, and all shipments of seed must be so labeled;
7. EPA has determined that residues of benomyl resulting from this use are not likely to exceed 0.20 ppm in cabbage and cauliflower and 0.40 ppm in broccoli and brussels sprouts; cabbage, cauliflower, broccoli, and brussels sprouts with residues not exceeding these levels may be shipped in interstate commerce. The Food and Drug Administrative, U.S. Department of Health, Education, and Welfare, has been advised of this action;
8. Only seeds intended for commercial planting may be treated with benomyl. Benomyl-treated seed will be clearly labeled as such;
9. The Applicant is reponsible for insuring that the restrictions of this specific exemption are met, and must submit a report summarizing the results of this program by October 30, 1978;
10. The Applicant will insure that residue data will be obtained to support tolerances for residues of benomyl in or on broccoli and brussels sprouts;
11. All applicable directions, restrictions, and precautions on the EPA-registered label must be followed;
12. The EPA shall be immediately informed of any adverse effects resulting from use of benomyl in connection with this exemption; and
13. All applications will be made by seed treating personnel of the seed companies or seed contractors. Personnel of these companies must be certified and must wear dust masks when treating crucifer seeds with benomyl.

Statutory Authority: Section 18 of the Federal Insecticide. Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136 *et seq.*).

Dated: July 10, 1978.

WILLIAM S. MURRAY,
Acting Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 78-19539 Filed 7-13-78; 8:45 am]

[6560-01]

[FRL 927-5; OPP-30150]

PESTICIDE PROGRAMS

Application To Register a Pesticide Product Containing a New Active Ingredient

American Hoechst Corp., Agricultural Division, Somerville, N.J. 08876, has submitted to the Environmental Protection Agency (EPA) an application to register the pesticide product Hoelon 3EC Herbicide (EPA file symbol 8340-RR), containing 35.49 percent of the active ingredient methyl 2-[4-(2,4-dichlorophenoxy) phenoxy] propanoate which has not been included in any previously registered pesticide products. The application proposes that the product be classified for general use to control certain annual grasses.

Notice of receipt of this application does not indicate a decision by the Agency on the application. Interested persons are invited to submit written comments on this application to the Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, EPA, Room 401, EAst Tower, 401 M Street SW., Washington, D.C. 20460. The comments must be received on or before August 14, 1978, and should bear a notation indicating the EPA file symbol "8340-RR". Comments received within the specified time period will be considered before a final decision is made; comments received after the specified time period will be considered only to the extent possible without delaying processing of the application. Specific questions concerning this application and the data submitted should be directed to Product Manager (PM) 23, Registration Division (WH-567), Office of Pesticide Programs, at the above address or by telephone at 202-755-1397. The label furnished by American Hoechst Corp., as well as all written comments filed pursuant to this notice, will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4:00 p.m. Monday through Friday.

Notice of approval or denial of this application to register Hoelon 3EC Herbicide will be announced in the FEDERAL REGISTER. Except for such material protected by section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the test data and other information submitted in support of registration as well as other scientific information deemed relevant to the registration decision may be made available after approval under the provisions of the Freedom of Information Act. The procedures for requesting such data will be given in the FEDERAL REGISTER if an application is approved.

Dated: July 6, 1978.

MARTIN H. ROGOFF,
Acting Director,
Registration Division.

[FR Doc. 78-19405 Filed 7-13-78; 8:45 am]

[6560-01]

[FRL 927-8]

SAFE DRINKING WATER ACT

Review of Variances and Exemptions

Notice is hereby given that pursuant to sections 1415(a)(1)(F) and 1416(d) of the Safe Drinking Water Act the Environmental Protection Agency proposes to conduct comprehensive reviews of all variances and exemptions granted during the period June 24, 1977 to June 23, 1978, by the Arkansas Department of Health, the Louisiana Department of Health and Human Resources, the New Mexico Environmental Improvement Division, the Oklahoma Department of Public Health and the Texas Department of Public Health.

Data and other information respecting the variances and exemptions to be reviewed and other information concerning new scientific matters bearing on such variances and exemptions are available for inspection during the review period at the following locations:

Arkansas Department of Public Health, Donaghey Building, 13th Floor, Seventh and Main Streets, Little Rock, Ark. 72001.
Louisiana Department of Health and Human Resources, 325 Loyola, Room 403, P.O. Box 60630, New Orleans, La. 70112.
New Mexico Environmental Improvement Division, Crown Building, 725 St. Michael's Drive, P.O. Box 968, Santa Fe, N. Mex. 87503.
Oklahoma State Department of Health, Northeast Tenth and Stonewall, P.O. Box 53551, Oklahoma City, Okla. 73105.
Texas Department of Health, 1100 West 49th Street, Austin, Tex. 78756.

Anyone wanting to submit comments or information on the variances or exemptions being reviewed and/or on the need for continuing them should address their comments to: Mr. Charles W. Sever, Chief, Water Supply Branch, Environmental Protection Agency, 1201 Elm, First International Bank Building, Dallas, Tex. 75270.

Comments must be received before August 15, 1978, to be usable in evaluating the variances and exemptions issued prior to June 24, 1978.

Upon completion of this comprehensive review, EPA shall publish in the FEDERAL REGISTER the review results together with findings relating to comments received in connection with such review.

ADLENE HARRISON,
Regional Administrator,
Region VI.

JULY 3, 1978.

[FR Doc. 78-19404 Filed 7-13-78; 8:45 am]

[6560-01]

[FRL 927-3]

WAIVER OF 1981 AUTOMOBILE EMISSION STANDARDS

Guidelines for Applications for Waiver of the 1981 NO_x Emission Standard, Based Upon the Use of Diesel Engine Technology

I. *Introduction and General Instructions.* Under section 202(b)(6)(B) of the Clean Air Act, as amended, 42 U.S.C. § 7521(b)(6)(B) (1977) (hereinafter the "Act"), any manufacturer may petition the Administrator for a waiver of the oxides of nitrogen (NO_x) standard for any class or category of light-duty vehicles manufactured during the four model year period beginning with model year 1981, up to a maximum level of 1.5 grams per vehicle mile, based upon the use of diesel engine technology. To receive a waiver, the manufacturer must demonstrate that the waiver is necessary in order to permit diesel engine technology to be used on the vehicles for which the waiver is sought. In addition, section 202(b)(6)(B) of the Act provides that a waiver may only be granted if the Administrator determines

(i) that such waiver will not endanger public health,
(ii) that such waiver will result in significant fuel savings at least equal to the fuel economy standard applicable in each year under the Energy Policy and Conservation Act, and
(iii) that the technology has a potential for long-term air quality benefit and has the potential to meet or exceed the average fuel economy standard applicable under the Energy Policy and Conservation Act at the expiration of the waiver.

The purpose of this notice is to establish guidelines concerning the information which is to be provided in any application for a waiver of the NO_x standard based upon diesel engine technology. In seeking a waiver under section 202(b)(6)(B) of the Act, an affirmative burden is placed on the manufacturer to provide sufficient information to demonstrate that a waiver should be granted. The infomation contained in the application must be sufficient to satisfy each of the waiver criteria specified above.

The application should contain separate responses to each item specified in section III of these guidelines. The applicant may add to or expand upon any item to the extent he deems nec-

essary or helpful to support the request for a waiver. The application may include any reports, records, or information pertinent to the request. The Administrator may request additional information on any item from the applicant if such information is deemed necessary or useful to the waiver determination. Furthermore, the Administrator need not base his decision solely on the application, and may consider any additional information as well.

A manufacturer may claim that any information submitted under these guidelines is entitled to confidential treatment. To make such a claim, the manufacturer must submit the confidential information segregated from the nonconfidential information and identified by a label such as "trade secrets," "company confidential," or other appropriate label. Any information claimed as confidential in this manner will be disclosed by EPA only to the extent and by means of the procedures set forth in 40 CFR part 2, subpart B. Failure to assert a confidentiality claim at the time of submission will result in the placing of the information in the public record without further notice.

As provided in section 202(b)(6)(B), the waiver decision is to be made after notice and opportunity for a public hearing. In order to assure meaningful satisfaction of this requirement, interested persons must be given adequate and timely access to the application. Therefore, a minimum of ten (10) copies of the application should be submitted to the U.S. Environmental Protection Agency, Mobile Source Enforcement Division (EN-340), 401 M Street SW., Washington, D.C. 20460. Any questions regarding the guidelines published today may be addressed to the Mobile Source Enforcement Division at the above address.

II. *Discussion and Legislative History.* The diesel technology NO_x waiver of section 202(b)(6)(B) was added to the Act as part of the Clean Air Act Amendments of 1977, Pub. L. No. 95-95, 91 Stat. 685 (hereinafter "1977 Amendments"). The final provision evolved from the House version of the 1977 Amendments, H.R. 6161, 95th Cong., 1st Sess. (1977). Section 203 of the version of H.R. 6161 passed by the House on may 26, 1977 sought to amend section 202(b)(6) of the Act by including a NO_x waiver provision applicable to "innovative power train technology" which "can produce a subtantial energy saving * * * as compared to conventional power trains incorporating spark ignited, gasoline, internal combustion engines." H.R. 6161, 95th Cong., 1st Sess. § 203 at p. 156 (1977). this provision was part of the Dingell-Broyhill amendment adopted by the House on May 26, 1977. 123 Cong. Rec. H5100, 5145-46 (daily ed. May 26, 1977). Although this provision made no specific mention of diesel engine technology, it is clear from the debates surrounding the Dingell-Broyhill amendment that diesel technology was intended to be a major element of the waiver. 123 Cong. Rec. H5106, 5119-5120 (daily ed. May 26, 1977) (remarks of Representatives Dingell and Broyhill). Fuel economy was the primary consideration behind this waiver provision, and one important purpose of the waiver was to stimulate the exploration of diesel engine technology for use in passenger cars. Id. See 123 Cong. Rec. S13703 (daily ed. August 4, 1977) (remarks of Senator Muskie).

The final waiver provision agreed upon by the Conference Committee represented a substantial revision of the House provision. The Conference Committee separated the House provision into two components, one expressly dealing solely with diesel engine technology (the current section 202(b)(6)(B)), and the other involving innovative technology or an innovative emission control device or system. See H.R. Rep. No. 564, 95th Cong., 1st Sess. 165-66 (1977) (hereinafter "Conference Report"); 123 Cong. Rec. S13703 (daily ed. August 4, 1977) (remarks of Senator Muskie).[1]

As adopted by Congress in its final Conference version, the diesel technology NO_x waiver is intended to be narrow in scope, and a waiver will only be granted if each of the criteria enumerated in section 202(b)(6)(B) of the Act is satisfied. 123 Cong. Rec. S132703 (daily ed. August 4, 1977) (remarks of Senator Muskie). As noted above, in seeking a waiver under this section an affirmative burden is placed on the manufacturer to provide sufficient information to demonstrate that each of the specified criteria has been satisfied.

According to the language of section 202(b)(6)(B), any manufacturer may request a waiver. Under section 216(1) of the Act, 42 U.S.C. § 7550(1) (1977), a manufacturer is defined as:

> Any person engaged in the manufacturing or assembling of new motor vehicles or new motor vehicle engines, or importing such vehicles or engines for resale, or who acts for and is under the control of any such person in connection with the distribution of new motor vehicles or new motor vehicle engines, but shall not include any dealer with respect to new motor vehicles or new motor vehicle engines received by him in commerce.

A manufacturer may request a waiver for a class or category of light-duty vehicles or engines. "Light-duty vehicle" is defined in 40 CFR 86.077-2 (1977) as "a passenger car or passenger car derivative seating 12 passengers or less." As used in section 202(b)(6)(B), "engines" will mean engines which are to be incorporated into light-duty vehicles. For purposes of section 202(b)(6)(B), "class or category" will be considered synonymous with "engine family" as that phrase is defined in 40 CFR 86.077-2 (1977), and as further defined in 40 CFR 86.078-24 (a)(2) through (a)(4) (1977). Any separation of "class or category" based upon 40 CFR 86.078-24(a)(4) must be fully justified in the application.

In order to receive a waiver under section 202(b)(6)(B), the manufacturer must demonstrate that the waiver "is necessary to permit the use of diesel engine technology" in the vehicles covered by the waiver application. With respect to this requirement, "diesel engine technology" means an internal combustion engine that operates primarily on the compression ignition principle and which uses a distillate type fuel. In order to demonstrate that the waiver is necessary to permit the use of diesel engine technology, the manufacturer must show that unless the waiver is granted the subject vehicles will not be able to meet the standards otherwise applicable (i.e., 0.4 grams/mile HC, 3.4 grams/mile CO, and 1.0 grams/mile NO_x) throughout the period for which the waiver is sought. This requires a showing that the specific system sought to be incorporated into these vehicles cannot meet the statutory standards, plus a showing of why any additional device, equipment, or aspect of the state of diesel engine technology, which presently exists or may become available in the future, which would otherwise permit the subject vehicles to meet the statutory standards cannot be incorporated into these vehicles during the waiver period. It should also be stressed that although the waiver may be requested for the 4-model-year period beginning with the 1981 model year, the waiver will be granted for a shorter period if the subject vehicles, with the use of diesel engine technology, can meet the statutory standards prior to the 1985 model year. If such were the case, then a 4-year-waiver period would not be "necessary to permit the use of diesel engine technology" in these vehicles within the meaning of section 202(b)(6)(B). The same reasoning applies to the NO_x emission level for which the waiver will be granted. The

[1] The innovative technology waiver appears as section 202(b)(6)(A) of the Act, 42 U.S.C. § 7521(b)(6)(A) (1977). In this final version this waiver is intended "for the purpose of stimulating new, currently unmarketed technologies." 123 Cong. Rec. S13703 (daily ed. August 4, 1977) (remarks of Sen. Muskie). According to the language of section 202(b)(6)(A) the waiver is only available or a technology or system which "was not utilized by more than 1 percent of the light/duty vehicles sold in the United States in the 1975 model year." Application guidelines for manufacturers seeking a waiver under section 202(b)(6)(A) will be published in the near future.

maximum level is specified as 1.5 grams/mile. However, if the use of diesel engine technology in the subject vehicles permits these vehicles to meet a NO_x emission level of less than 1.5 grams/mile, then a waiver will only be granted for the level which can be achieved. In addition, if the subject vehicles can comply with a decreasing NO_x standard throughout the waiver period (e.g., 1.5 grams/mile for 1981, 1.3 grams/mile for 1982, etc.), then the waiver will only be granted for these attainable levels. As a result, in the waiver application the manufacturer should specify the model years for which a waiver is sought, and the specific NO_x levels (anywhere between 1.0 and 1.5 grams/mile) requested for each of those model years.

Under section 202(b)(6)(B)(i) of the Act, the waiver can only be granted if it "will not endanger public health." In enacting this criterion Congress was expressing its concern over the potential health effects of emissions of unregulated pollutants from diesel engines, as well as the health effects associated with the increased NO_x emissions which would result from the waiver. See, e.g., H.R. Rept. No. 294, 95th Cong., 1st Sess. 19, 237, 250-51 (1977); S. Rept. No. 127, 95th Cong., 1st Sess. 70 (1977); 123 Cong. Rec. H5119-20 (daily ed. May 26, 1977) (remarks of Representative Broyhill). Congress also specifically expressed its concerns over emissions of unregulated pollutants by enacting section 202(a)(4) as part of the 1977 Amendments.[2] Therefore, in seeking to satisfy the "public health" criterion of section 202(b)(6)(B)(i) the manufacturer must demonstrate in his application that the increased levels of NO_x emission will not endanger public health, and in addition that the emissions of unregulated pollutants from the subject vehicles will not endanger public health.

Under section 202(b)(6)(B)(ii), in order for a waiver to be granted, the waiver must "result in significant fuel economy savings at least equal to the fuel economy standard applicable in each year under the Energy Policy and Conservation Act" (hereinafter "EPCA"). As stated above, fuel economy was a major consideration behind the diesel waiver provision. As a result, this criterion forms an especially important element of the waiver. In order to demonstrate that the waiver will result in significant fuel savings, the manufacturer must show that for each model year the waiver is requested, that each "base level" (as defined by 40 CFR §600.002-77 (1977)) within the subject class or category will meet the applicable EPCA fuel economy standard.

In a related manner, section 202(b)(6)(B)(iii) requires as a condition of the waiver that the subject technology have the potential to meet or exceed the EPCA fuel economy standard applicable at the expiration of the waiver. In order to satisfy this criterion the manufacturer must demonstrate that there is a substantial likelihood that each base level within the subject class or category will meet the EPCA fuel economy standard applicable at the expiration of the waiver.

Finally, section 202(b)(6)(B)(iii) also requires that the subject technology have a potential for long-term air quality benefit. To satisfy this criterion the manufacturter must demonstrate that there is a substantial likelihood that the vehicles covered by the waiver application will be able to meet the statutory emission standards at the end of the waiver period. 123 Cong. Rec. S13703 (daily ed. August 4, 1977) (remarks of Senator Muskie). As stated by Senator Muskie during the Senate consideration of the Conference Committee Report, "the waiver is not intended to provide a loophole in the statutory standards, but only to provide an opportunity for technology development which may lead to greatly improved emissions performance in the next decade." Id.

III. *Application.* The waiver application should be prepared in five major sections, and should correspond to the following format.

Section 1: This section should not include any confidential information and should:

a. Identify the applicant as a manufacturer, and identify any other person engaged in the manufacturing, distribution, and sale of vehicles manufactured, distributed, or sold by the applicant.

b. Contain a summary of the applicant's position and supporting arguments with respect to the four criteria set forth in the above Introduction and Discussion.

c. Set forth the class or category, and the model years for which the waiver is sought.

d. Set forth the interim standards for each model year which the applicant believes should be established in lieu of the standards which would otherwise be applicable.

Section 2: This section of the application should present all the information needed to demonstrate that the waiver is necessary to permit the use of diesel engine technology in those vehicles covered by the application. The applicant must demonstrate that with the use of diesel engine technology, the subject class or category of vehicles cannot meet the statutory standards (i.e., 0.41 grams/mile HC, 3.4 grams/mile CO, and 1.0 grams/mile NO_x) for each model year that the waiver is requested. The information provided in the application must show (i) that the specific system sought to be incorporated into the subject vehicles cannot meet the statutory standards, and (ii) the reasons why any aspect of the state of diesel technology or light-duty emission control technology which presently exists or which may become available in the future which would permit light-duty diesels to meet the statutory standards cannot be incorporated into the subject vehicles during the waiver period. Section 2 should be divided into the following subsections.

a. In seeking to demonstrate that the waiver is necessary to permit the use of diesel engine technology, the applicant should provide a detailed account of the level of effort expended in research, development, testing, and engineering programs in the area of light-duty diesel emissions control. This account should not be limited solely to efforts aimed at controlling NO_x) emissions, but rather should encompass all programs dealing with light-duty diesel emissions control development (including those programs targeted towards a NO_x) standard of 0.4 grams/mile). In this subsection the manufacturer should provide a narrative discussion of the results of each program. Quantitative data should be included to the extent not covered by any other portion of the application.

b. This subsection should provide the details of the manufacturer's argument that the class or category of vehicles for which the waiver is sought cannot meet the statutory standards of 0.41 HC, 3.4. CO and 1.0 NO_x). The subsection should be divided into two parts. The first should present a general discussion of the applicant's argument as it relates to the topics listed. The second should give a detailed presentation, in the format shown, of the technical information required to make a meaningful assessment of the applicant's argument.

1. General information. In this part, the applicant should discuss:

A. What emission control results have been achieved to date for the first choice system and all alternative systems considered for compliance in 1981.

B. Engineering goals for the emission levels to be achieved by low mileage engineering prototypes in order to achieve compliance with the emission standards, including assumptions made to arrive at those goals, factors assumed to allow for production variations, prototype-to-production slippages, and deterioration; and change in production variations assumed to occur by 1981 model year production.

C. Major problems associated with the most promising system investigated, including fuel consumption, emissions of currently unregulated pollut-

[2] Section 202(a)(4) prohibits the use of any emission control device which causes or contributes to an unreasonable risk to public health, welfare, or safety. In determining whether there is an unreasonable risk, section 202(a)(4)(B) expressly directs the Administrator to consider emissions of unregulated pollutants.

ants, reduced driveability, other performance penalties, and any cost, safety, maintenance, servicing, warranty, development (emission performance, durability, and producibility), production tooling, and vendor problems.

D. Plans for resolving the problems identified in C, including use of technology developed outside the company or outside the automobile industry, timetable for developing solutions, critical milestones for meeting this timetable, confidence placed in the schedule, areas of greatest uncertainty, probable or possible breakthrough(s) that would result in a significant reduction in lead time, and consequences of any shortcuts both to the company and the potential vehicle user.

E. Detailed lead time schedule for model year 1981 production, including crucial milestones, commitment and signoff dates, lead time requirements of vendors, and specific lead time schedules for those emission control system components which are most critical. Discussion of how much less lead time would be required to produce a reduced number of models or nameplates that will comply.

F. The efforts that have been made to identify useful technology developed by other companies.

G. The interim standards which could be met in each of the model years 1981-1984 (not to exceed 0.41 HC, 3.4 CO, 1.5 NO_x) including the assumptions used to arrive at these attainable levels, emission control system to be used, the incremental cost to the car buyer for such a system (compared to the cost of the system which would be used to meet the maximum waiver level of 1.5 grams/mile NO_x), and the associated increased incremental annual operating and maintenance cost. Such interim standards should reflect the greatest degree of emission control achievable by application of available technology.

2. Technical information. Information should be submitted on each and every program, project, or working area that impacts on the overall emission control system development relevant to the waiver application. This should include all programs/projects that are directed toward the development of systems or subsystems to be used in 1981 emission control systems as well as those programs/projects aimed at the development of systems or subsystems not now actively under consideration for incorporation into 1981 systems but which at one time were under consideration. Information on all system or subsystem development relevant to the waiver application is necessary even if the program/project was started before the passage of the Clean Air Act Amendments of 1977.

A. Test procedures an emission data format. For maximum usefulness all emission data reported should be taken by the 1975 Federal test procedure. If this is not possible, data should be reported in its original form, specifying the appropriate test procedure. The data should then be converted into a 1975 test procedure equivalent (if possible) by the applicant. The basis for such a conversion process should include tests with the same type of emission control systems on similar vehicles using both the non-1975 test procedure and the 1975 test procedure. The explantion of each conversion should include a statistical justification of the conversion factors chosen.

B. Vehicle and test description. The vehicles on which the emission data is presented should be fully identified with respect to the following 23 items:

1. Vehicle description: Vehicle identification number, marketing name and model, body type, tire size, weight (full fuel tank).

2. Purpose of test: Durability, experimental system evaluation, etc.

3. Mileage accumulation procedure: A.M.A. driving cycle, company durability cycle (specify cycle amd maintenance performed), etc.

4. Emissions test procedure: 1975 test procedure.

5. Testing frequency: Planned/actual mileage accumulation between tests.

6. Engine: Displacement, configuration, bore, stroke, combustion chamber type, compression ratio, swirl, quench.

7. Fuel injection: Type of injection, manufacturer's model number. Air/fuel ratio curve. Altitude compensation. Cold start calibration.

8. Aspiration: Naturally aspirated, supercharged, turbo-charged. Maximum system air flow rate (cfm).

9. Air cleaner: Intake air treatment, heat source, modulation procedure, set point temperature, etc.

10. Powertrain: Type—automatic, manual 3-speed, 4-speed, etc.

11. Torque converter: Size and manufacturer, model number, stall speed, torque multiplication, etc.

12. Clutch: Type.

13. Transmission: Type, manufacturer, model number, stall speed, torque multiplication, etc.

14. N/V: Engine speed with transmission in revolutions per minute divided by vehicle speed expressed in miles per hour.

15. Exhaust gas recirculation: Type of control. Flow rate as a function of engine load and speed. Admission flow characteristics.

16. Exhaust gas aftertreatment devices. This should identify the type of device employed (thermal catalytic trap oxidizer or combination). In addition, a detailed description of the systems should be included which specifies configurations, materials volume, flow characteristics, active materials utilized (and total loading), insulation, etc.

17. Special system features: Any components not shown above including modulating defeat or override devices.

18. Fuel: Brand name, cetane rating, distillation curve, gravity (API), total sulfur (percent), flash point, viscosity (centistokes), and additives studied.

19. Engine lubricant: Brand name, SAE viscosity range. Content of sulfur, phosphorus, lead, calcium, etc. Discussion of special additives studied.

20. The date of the test, the driver's full name, the responsible engineer's full name and the project under which this test was performed.

C. Durability testing. Durability test data submitted should include at least the following information:

(1) A description of the type of durability schedule, such as the EPA-AMA certification durability schedule.

(2) The mileage increments at which the data were taken.

(3) The deterioration factor, as would be calculated for certification.

(4) If a test is reported to have been terminated, the reasons for the termination should be explained fully for each cause in which durability testing was stopped. A discussion of what was learned from terminated tests, for example a description of the analysis made of failed components, should be included for each test that was stopped. How the results of unsuccessful (or successful) tests feed back to the direction and emphasis of the program is considered important.

(5) The number of vehicles used, their relationship to the current and planned product mix, and the number of duplicate vehicles for each engine/transmission family undergoing durability testing should be explained fully. The explanation should indicate (i) the estimated confidence level in the results from the number of test vehicles, and (ii) a comparison between the number of vehicles claimed adequate for emission control systems durability testing and the number of vehicles usually tested for durability in proving out other systems.

D. Test results. All relevant data resulting from developmental programs and projects should be reported. This includes data from durability, performance, component/subsystem checkout, calibration and optimization testing.

(1) Emission test results. This information should be presented as indicated in application section 2(b)(2)(A) above, and should include in chronological order a record of all system changes, maintenance (including reasons for performing maintenance), and a detailed explanation of reasons for test termination when it occurs.

(2) Any other test results (e.g., fuel economy, emissions of unregulated

pollutants) if the applicant asserts that the inability of the vehicles covered by the waiver application to meet the statutory standards is affected by such results.

c. This subsection should contain the following additional information to aid the Administrator in reaching a determination as to whether the waiver is necessary to permit the use of diesel engine technology in the vehicles covered by the waiver application.

1. Projected degree and range of penetration of light-duty diesels into the passenger car market over the waiver period.

2. Details of the capital planning and production process required in order to place light-duty diesels into the passenger car market, and the impact that granting or denying the waiver will have on this process.

3. The impact that denying a waiver, or delaying a decision on the waiver, will have on the light-duty diesel research and development program (or any other research and development program).

4. The impact of other regulatory actions which could be taken by EPA (e.g., promulgation of a particulate standard, a more stringent HC standard for diesels) on the light-duty diesel program.

5. Cost and economic implications of denial of the waiver request.

6. Any other effects or penalties associated with denial of the waiver request as related to vehicle production, mix, and availability of ligh-duty diesels (e.g., exploration of new control devices, accelerated down-sizing).

Section 3: This section of the application should present sufficient information to demonstrate that the waiver will not endanger public health. At a minimum, the manufacturer should submit information based upon those data which are currently available, or are in the process of being generated. The applicant should submit this information in the form of a study which details the difference in health impact between achieving the statutory standards of 1.0 grams/mile NO_x and meeting whatever interim standard is proposed by the applicant (not to exceed 1.5 grams/mile NO_x). The study should also include a detailed analysis of the health effects of unregulated pollutants from the diesel engines for which the waiver is sought. In addition, the study should consider the health impact difference between diesel powered vehicles meeting the proposed interim standards and gasoline vehicles meeting the statutory standards during the waiver period, with regard to both increases in oxides of nitrogen and changes in the levels of unregulated exhaust emissions. Section 3 should contain the following subsections.

a. Effect of increase in oxides of nitrogen. The study should indicate not only the difference in total NO_x emissions, but should also consider the effect on health of the difference in the proportion of NO and NO_2 emitted directly from the tailpipe.

1. Present diesel powered vehicle NO_x emissions contain, in general, a much higher percentage of NO_2 than do the emissions from gasoline powered vehicles. In addition, the ratio of NO to NO_2 in NO_x emissions from diesel engines may vary significantly from one system to another in contrast to gasoline vehicles where the variation is generally low. Therefore, the applicant's study should present emissions data from the engine-system combinations projected for use in meeting the suggested interim standards.

(A) The vehicles/engines should be fully described as in application section 2(b)(2)(B) above.

(B) Emissions data should be presented for each vehicle/engine which specifies total NO_x as well as individual emission results of NO and NO_2.

(1) The test procedure utilized to obtain the emission values should be specified. The 1975 Federal test procedure (FTP) is preferred.

(2) If other procedures or cycles are employed, they should be fully described and the emission values obtained should be adjusted to reflect those which would be obtained from the FTP, as described in application section 2(b)(2)(A) above.

(C) Projected sales data for each engine-system combination projected for use, above, should be stated.

2 (A) The data obtained from the vehicles (engines) projected for use in obtaining the interim proposed standards along with the projected sales for each should be factored into an air quality impact study. This study should establish the difference in air quality that would result between using the diesel powered vehicles which meet the proposed interim standards and: (1) Diesel powered vehicles which meet the statutory standards, and (2) gasoline vehicles which meet the statutory standards.

(B) For these two comparisons, the sources of data from the gasoline and diesel powered vehicles which meet the statutory standards should be presented. For data obtained from actual test data, the vehicles and test procedures should be fully described as in application sections 2(b)(2) (A) and (B) above. If actual test data cannot be obtained for comparison, the assumptions used to make the comparisons should be fully explained.

(C) For the two comparisons, the following NO_x related, air quality impact considerations should be treated: (i) The effect on oxidant levels; (ii) the effect on yearly NO_2 levels; (iii) the effect on short term NO_2 levels; and (iv) peak NO_x exposure levels at or near roadways.

In providing this information, the application should identify any cities used as the basis for the data, and fully described any models used in the study.

(D) For the two comparisons, include any available information regarding odors and noise levels, and describe each test or experiment in detail.

3. The air quality impact study performed for application section 3(a)(2) should be used by the applicant to assess the health impact of NO_x related changes in air quality. The applicant should present a narrative describing the conclusions reached, the calculation procedures used, and the underlying assumptions.

b. Health impact of unregulated emissions. The applicant's health impact study should consider the effect of emissions not yet regulated.

1. Data on the following emissions should be examined:

a. Nitrosamines,
b. Particulates,
c. Aldehydes,
d. Phenols,
e. B(a)P,
f. Gaseous organics,
g. Organics extracted from particulates, and
h. Sulfates.

2. The data for these emissions should be obtained from the same vehicles and using the same test cycles as in (a) above, for both the vehicles aimed at meeting the interim standards as well as the diesel powered and gasoline vehicles which meet the statutory standards. Any differences in vehicles or test procedures should be fully explained.

3. As in (a) above, the data developed for each of the as yet unregulated emissions should be factored into an air quality impact study which will quantify the difference in air quality for each of the unregulated emissions which will result between diesel powered vehicles meeting the interim standard and: (1) Diesel powered vehicles meeting the statutory standard, and (2) gasoline vehicles meeting the statutory standards.

4. The data developed in the air quality impact study should then be factored into a health impact study for each of the unregulated emissions considered. This health assessment should include a narrative which describes the conclusions reached, the procedures used for the determinations, and any underlying assumptions employed.

5. In particular, submit all available health effects research conducted in house or via contract or other funding mechanism to demonstrate that there is no endangerment to the public

health. Please structure the presentation of the health effects data using the following format:

(A) In vitro bioassays/short-term screening systems:

(1) Describe the specific bioassay/short-term screening test used (i) if employing a standard procedure, cite literature reference; (ii) If employing a modified or new procedure, describe the procedure sufficiently so one familiar with in vitro bioassays/short-term screening systems can duplicate the test.

(2) Generation of the sample which is introduced into the in vitro bioassays/short-term screening systems: (i) Describe how the sample introduced into the bioassay/short-term screening system was obtained in sufficient detail; include the following information:

1. Engine type,
2. Driving schedule,
3. Fuel burned (including composition of unburned fuel if available),
4. Type of lubricating oil used,
5. Dilution ratio,
6. Temperature of sample collection device,
7. Description of sample collection device,
8. Length of time for sample collection, and
9. Separation/fractionation techniques used in preparing collected samples for introduction into bioassay/short-term screening system (provide sufficient detail so one familiar with separation/fractionation techniques can duplicate the operation).

(3) Results obtained for each type of bioassay/short-term screening system experiment performed.

(4) Any other pertinent information that a researcher would provide to fully inform another of the bioassay/short-term screening system research results.

(B) Whole animal studies. (1) Whole animal-whole exhaust studies (i) provide sufficient information on the following:

1. Engine used to generate the exposure exhaust;
2. Driving schedule;
3. Fuel burned (including composition of unburned fuel, if available);
4. Type of lubricating oil used;
5. Dilution ratio of the exhaust prior to animal exposure;
6. Description of the duct work from the engine manifold to the animal chamber;
7. Analytical chemistry performed on the exhaust stream (list the specific components monitored, the measurement technique used, frequency of measurement of each component, locations where measurements are made);
8. Identify animal species studied;
9. Describe the biological parameters/measurements made on the animal species; describe the biological end points of concern; i.e., describe each biological experiment conducted, so one familiar with animal toxicological research can duplicate the experiment; and
10. Number of animals used in each biological experiment.

(ii) Provide the results of whole animal-whole exhaust studies (this includes exposure via the inhalation, injection, implantation, etc. route).

1. Biological results.

2. Analytical chemistry results (i.e., composition and concentration to which animals are exposed).

(2) Whole animal-exhaust component studies (i.e., studies with subsets of chemicals/materials found in the diesel exhaust):

(i) Provide all information requested in (B)(1)(i), where relevant, in order to enable an understanding of how the exhaust component(s) was obtained that was introduced into the animal experiment.

(ii) Provide the results of whole animal studies with subsets of chemicals/materials found in the diesel exhaust.

1. Biological results.

2. Analytical chemistry results (i.e., the composition and concentration to which animals are exposed).

(C) Epidemiology: (1) Describe any epidemiological studies on diesel exhaust products you have conducted in sufficient detail so one familiar with epidemiology understands how the experiment is conducted, what is its purpose, and what biological and air pollutant endpoints/parameters are being measured/evaluated.

(2) Describe the results of these epidemiological studies.

(3) Identify literature cites for all major epidemiological studies on diesels that you have found; identify all major epidemiological studies you are aware of which are not published which will contribute to an understanding of the possible health risk, if any, from diesels.

(D) Describe all ongoing health effects research that you are supporting in the format of (A) through (C) above for which results are not yet available and indicate expected month and year for completion and reporting of each major experiment.

c. In addition to the studies discussed above, provide in this subsection any available information regarding the impact that a delay in the waiver decision caused by the extended evaluation of health effects data would have on the optimum program for introducing light-duty diesels into the passenger car market.

Section 4: This section of the application should present sufficient information to demonstrate that the waiver will result in significant fuel economy benefits. The information must demonstrate that each base level within the class or category of vehicles covered by the application will meet the applicable EPCA fuel economy standard for each year of the waiver. The applicant should prepare a report which presents the fuel economy which would result when the diesel systems meeting the suggested interim standards are used. These results should be compared to: (1) The fuel economy which would be achieved if diesel powered vehicles meeting the statutory standards are used, and (2) the fuel economy which would result if gasoline vehicles achieving the statutory standards are used.

a. Vehicles (engines) used to develop data should be the same as used in application section 2 above. Any deviations from those vehicles must be noted and a complete explanation should be provided. A complete description of such vehicles must be presented.

b. Fuel economy data should be presented for both the FTP and the highway fuel economy (HFET) cycle for each vehicle. If an alternate test procedure is utilized, a full explanation of the reason for deviation should be presented. Fuel economy data developed on alternate cycles should be adjusted to approximate the results which would correspond to FTP and HFET results. Justification supporting these adjustments should be presented in accordance with the guidelines in application section 2(b)(2)(A) above.

c. The applicant should demonstrate that the granting of a waiver will result in improved fuel economy. To accomplish this goal, the applicant must show as a minimum that each base level within the class or category for which a waiver is requested will be able to achieve the EPCA fuel economy standard for each model year in which a waiver is sought.

d. Provide all available data regarding the impact that (1) granting the waiver and (2) denying the waiver will have on the mix of all production passenger cars so that the manufacturer's corporate average fuel economy will be able to meet the EPCA standard applicable for each year of the waiver.

Section 5: This section of the application should present sufficient information to demonstrate that the technology utilitzed in the class or category for which a waiver is sought has: (1) The potential for long term air quality benefit, and (2) the potential to meet or exceed the EPCA fuel economy standard at the expiration of the waiver.

a. Long term air quality benefit. In order to establish that the technology for which a waiver is requested has the potential for long term air quality benefit, data from those engine configurations proposed for sale under the interim waiver standards should be projected ahead to reflect configurations on new vehicles to be produced in the 1985 model year.

1. Any developmental data available to support these emission level projections should be included in this section. The test and calculation procedures used in these developmental ef-

forts should be fully disclosed, along with a discussion of the theoretical basis which supports the projection of these test data into the conclusion that a real emission control improvement will result.

2. If no data are available to support a contention that the technology has the potential for long term air quality benefits, then as a minimum, the applicant should present a narrative description of the theory upon which the improvements in emission control are expected. This should include a statement of all assumptions made when the theory is considered for the particular engine under consideration.

3. The applicant's data and/or theoretical approach must as a minimum demonstrate a substantial likelihood that the vehicles under consideration for a waiver will achieve the statutory standards of 0.41 HC, 3.4 CO and 1.0 NO_x at the expiration of the waiver.

A. Achieving the level of 1.0 NO_x will be evidence of a long term air quality benefit if, when the vehicles meeting the interim waiver standard are compared to the vehicles meeting the 1.0 NO_x value, the following criteria are met:

(i) The levels of NO_x emitted at the tailpipe will not increase;

(ii) The particulate emissions will not increase;

(iii) The emissions of other unregulated pollutants will not increase. This should include a discussion of aldehydes, phenols, BaP, sulfates, and nitrosamines.

b. Potential to meet or exceed the EPCA fuel econonmy standards at the expiration of the waiver. The applicant should demonstrate that there is a substantial likelihood that the use of the diesel technology under consideration will:

1. Result in each base level within the class or category covered by the waiver application being able to meet or exceed the EPCA fuel economy standard applicable at the expiration of the waiver, and

2. Result in the applicant's corporate average fuel economy meeting or exceeding the EPCA standard applicable at the expiration of the waiver.

The data used in support of these contentions should be supported by test data from the FTP and HFET (if possible). If those data are not available, data from other test procedures may be used to project the fuel economy benefits expected. Those test procedures should be fully described and the basis for using those data as a representation of FTP and HFET fuel economy results should be fully justified. If no test data are available, then the applicant should present convincing theoretical evidence that a fuel economy benefit wil accrue. The level of this benefit should be estimated, and the basis of these estimates should be presented.

c. Provide all available data regarding the impact that (1) granting the waiver and (2) denying the waiver will have on the mix of all production passenger cars so that the manufacturer's corporate average fuel economy will be able to meet the EPCA standard applicable at the expiration of the waiver.

Dated: July 7, 1978.

MARVIN B. DURNING,
Assistant Administrator for Enforcement.

[FR Doc. 78-19369 Filed 7-13-78; 8:45 am]

[6570-06]

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PRIVACY ACT OF 1974

AGENCY: Equal Employment Opportunity Commission.

ACTION: Amendment of a System of Records.

SUMMARY: Amendment of the "Categories of Records" portion of Privacy Act system notice, System EEOC-2, Attorney Referral List.

DATES: This amendment to the Commission's Privacy Act System Notice EEOC-2 is effective July 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Constance L. Dupre, Associate General Counsel, Legal Counsel Division, EEOC, 2401 E Street NW., Washington, D.C. 20506, 202-634-6460.

SUPPLEMENTARY INFORMATION: The Equal Employment Opportunity Commission maintains within each of its District Offices voluntarily provided information on attorneys to whom the Commission may refer charging parties in need of legal assistance in prosecuting actions under Title VII of the Civil Rights Act of 1964, as amended. The Privacy Act system notice regarding this information was most recently published at 43 FR 19634 (May 5, 1978).

In order to improve the effectiveness of the attorney referral program, the Commission desires to expand the "Categories of Records" (i.e. information) maintained on participating attorneys. The additional information maintained will include: whether the attorney speaks a foreign language fluently, whether the attorney has the capacity to engage in class action litigation, and whether the attorney charges a consultation fee.

By virtue of the authority vested in the Commission under Title VII of the Civil Rights Act of 1964, as amended, and §§e and f of the Privacy Act of 1974, 5 U.S.C. §§ 552a (e) and (f), the Equal Employment Opportunity Commission hereby publishes the following amendment to the "Categories of Records" portion of its Privacy Act System of Records EEOC-2, Attorney Referral List, to be effective July 14, 1978.

Signed at Washington, D.C., this 11th day of July 1978.

For the Commission.

ELEANOR HOLMES NORTON,
Chair.

System name: Attorney Referral List

* * * * *

Categories of records in the system: Contains attorneys' names, business addresses and telephone numbers, nature of and amount of civil rights litigation experience, state and Federal bar admission; whether the attorneys have the capacity and desire to handle class actions; whether the attorneys charge consultation fees (and how much); whether the attorneys will waive the consultation fee; the types of fee arrangements the attorneys will accept; and whether the attorneys speak a foreign language fluently.

* * * * *

[FR Doc. 78-19613 Filed 7-13-78; 8:45 am]

[1610-01]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Expiration of GAO Clearance for an FPC (FERC) Reporting Requirement

Notice is hereby given that the GAO clearance for Federal Power Commission (FPC) form 40 expired after the data collection of March 1, 1978. See 44 U.S.C. 3512 (Supp. V, 1975). Form 40 has been reissued under the Federal Energy Regulatory Commission (FERC).

GAO granted clearance to FPC Form 40, Annual Report of Proved Domestic Gas Reserves on August 11, 1975. The clearance was limited to 1 year to allow for an initial data collection because of the burden issues identified during our review.

After GAO granted clearance of form 40, FPC issued Order No. 526A on August 18, 1975. This order displayed the requirements and a copy of the form to be filed with the FPC. On October 15, 1975, the Ninth Circuit Court of Appeals postponed FPC efforts to collect form 40 information. On June 3, 1976, the court remanded the case to the FPC for further consideration.

On June 30, 1977, the FPC issued Order No. 526B. This order responded to the court's concern for further FPC explanation of why reservoir-by-reser-

voir reporting of natural gas reserves was necessary. Until that time, the FPC had not collected any data under GAO's 1975 clearance. Order No. 526B required the 1976 data to be filed by November 1, 1977. This date was subsequently changed to March 1, 1978, by Order No. 526C issued February 17, 1978.

Order No. 526C requires reporting for more than the initial collection. The order requires 1977 data by September 1, 1978, 1978 data by April 1, 1979, and annual data for subsequent years by April 1 of the year following the date for submission of form 40 data has changed many times, the form itself has stayed virtually the same.

Since the initial collection of data using form 40 has been completed with the filing of data on March 1, 1978, form 40 no longer has a valid GAO clearance. If form 40 is to be used to collect reserve data in the future, clearance from OMB is required.

JOHN M. LOVELADY,
Assistant Director,
Regulatory Reports Review.

[FR Doc. 78-19372 Filed 7-13-78; 8:45 am]

[4110-3]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 77N-0393; DESI 7245]

CERTAIN INHALATION BRONCHODILATORS

Withdrawal of Approval of New Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice withdraws approval of cyclopentamine hydrochloride with isoproterenol hydrochloride, and phenylephrine hydrochloride with isoproterenol sulfate. The basis for the withdrawal is the lack of substantial evidence that the drug products are effective. These combination products have been used to treat bronchial spasm.

EFFECTIVE DATE: July 24, 1978.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific drug product should be directed to the Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs, Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Nathan J. Treinish, Bureau of Drugs (HFD-32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice of opportunity for hearing published in the FEDERAL REGISTER of March 3, 1978 (43 FR 8852), the Director of the Bureau of Drugs proposed to withdraw approval of the following new drug applications on the ground that the drug products lack substantial evidence of effectiveness for all of their labeled indications:

NDA 7-245; that part pertaining to Aerolone Compound Solution containing cyclopentamine hydrochloride and isoproterenol hydrochloride; Eli Lilly and Co., P.O. Box 618, Indianapolis, Ind. 46206.

NDA 11-726; Nebu-Prel with Phenylephrine containing isoproterenol sulfate and phenylephrine hydrochloride; Thomas J. Mahon, Inc., 19 Sylvan Ave., Englewood Cliffs, N.J. 07632.

No hearing for these products was requested. Eli Lilly & Co. filed a letter dated March 30, 1978, stating that it intends to submit a supplemental new drug application to reformulate Aerolone Compound Solution to a single-entity product containing isoproterenol as the only active ingredient. The reformulated product, to be renamed Aerolone Solution, will be handled through the normal supplemental new drug application procedures. Isoproterenol as a single entity has been classified as an effective bronchodilator (DESI 6327; 41 FR 37836; September 8, 1976).

All drug products that are identical, related, or similar to the drugs named above are not the subject of an approved new drug application are covered by the new drug applications reviewed and are subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance (address given above).

The product named below was also included in the notice of March 3, 1978. In response to the notice, the holder of the new drug application requested a hearing. The request is currently under review and will be the subject of a future FEDERAL REGISTER notice. Marketing of this product may continue pending a ruling on the hearing request.

NDA 13-296; Duo-Medihaler containing isoproterenol hydrochloride and phenylephrine bitartrate; Riker Laboratories, 19901 Nordhoff Street, Northridge, Calif. 91324.

No other person filed a written appearance of election as provided for by the notice. The failure to file such an appearance constitutes an election by such persons not to avail themselves of the opportunity for a hearing.

The Director of the Bureau of Drugs, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053, as amended (21 U.S.C. 355)), and under the authority delegated to him (21 CFR 5.82), finds that, on the basis of new information before him with respect to these drug products, evaluated together with the evidence available to him when the applications were approved, there is a lack of substantial evidence that the drug products will have the effects they purport or are represented to have under the conditions of use prescibed, recommended, or suggested in their labeling.

Therefore, pursuant to the foregoing finding, approval of NDA 7-245 and that part of NDA 11-726 providing for the drug product named above and all amendments and supplements applying thereto is withdrawn effective July 24, 1978.

Shipment in interstate commerce of products for which approval is withdrawn or of any identical, related, or similar product that is not the subject of an approved new drug application will then be unlawful. The product described above that is the subject of a pending hearing request may continue to be marketed.

Dated: July 5, 1978.

J. RICHARD CROUT,
Director, Bureau of Drugs.

[FR Doc. 78-19229 Filed 7-13-78; 8:45 am]

[1505-01]

DEPUTY

Panel Recommendation on Petition for Reclassification

Correction

In FR Doc. 78-15441 appearing on page 24601 in the issue of Tuesday, June 6, 1978, on page 24602, in the middle column, the 2nd full paragraph, the 14th line should read, "Protosul 10™ The Panel recommend-[ed]".

[4110-03]

[Docket No. 78P-0068]

EAU CLAIRE PACKING CO.

Tomato Juice Deviating From Identity Standard; Temporary Permit For Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces that a temporary permit has been

issued to Eau Claire Packing Co. to market test tomato juice from concentrate. The purpose of the temporary permit is to permit the applicant to measure consumer acceptance of the food.

EFFECTIVE DATE: This permit is effective for 15 months, beginning on the date the new food is introduced into or caused to be introduced into interstate commerce, but no later than October 12, 1978.

FOR FURTHER INFORMATION CONTACT:

F. Leo Kauffman, Bureau of Foods (HFF-414), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, DC 20204, 202-245-1164.

SUPPLEMENTARY INFORMATION: In accordance with § 130.17 (21 CFR 130.17) concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), notice is given that a temporary permit has been issued to Eau Claire Packing Co., Eau Claire, MI 49111. This permit covers interstate marketing tests of tomato juice that deviates from the standard of identity prescribed in § 156.145 (21 CFR 156.145). The permit provides for the temporary marketing of 100,000 cases of twelve 46-ounce cans of the product to be distributed in the States of Illinois, Indiana, Michigan, Ohio, and Wisconsin.

The test product will be manufactured in the Eau Claire Packing Co. plant located in Eau Claire, MI. The product is prepared from concentrated tomato liquid which complies with the requirements of § 155.191(a)(1) (21 CFR 155.191(a)(1)). The finished product will be equivalent to a single-strength tomato juice normally found in the marketplace.

The principal display panel of the label will state the product name as "Tomato Juice From Concentrate." Each of the ingredients used will be stated on the label as required by the applicable sections of Part 101 (21 CFR Part 101), except that the tomato ingredient complying with the requirements of § 155.191(a)(1) will be declared as "tomato concentrate."

This permit is effective for 15 months, beginning on the date the new food is introduced or caused to be introduced into interstate commerce, but no later than October 12, 1978.

Dated: July 6, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-19227 Filed 7-13-78; 8:45 am]

[1505-01]

[Docket No. 75N-0232]

FOOD FLAVORING

Additional Flavoring Substances in GRAS Review; Extension of Effective Date for Compliance With Bulk Flavor Ingredient Declaration Requirements

Correction

In FR Doc. 78-14273 appearing at page 22784, in the issue for Friday, May 26, 1978; make the following corrections:

1. On page 22784, third column, 13th line of the GRAS List, "2, 6-Dimethyl-3- (2-methyl-3-furyl)thio 4-", should read "2, 6-Dimethyl-3- (2-methyl-3-furyl)thio -4-".

2. On page 22785, first column, fourth entry from the top, "*p-Methoxycinnameldehyde*" should read "*p*-Methoxycinnameldehyde"; first column, 11th entry, "4-Methynonanoic acid" should read "4-Methylnonanoic acid.".

[4110-03]

[Docket No. 78N-0197; DESI 12339]

INHALATION PRODUCTS CONTAINING ISOETHARINE MESYLATE OR ISOETHARINE HYDROCHLORIDE

Drug Efficacy Study Implementation; Followup Notice

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice classifies drug products containing isoetharine mesylate or isoetharine hydrochloride as effective and sets forth the marketing and labeling conditions for them. It also states that combination drug products containing both isoetharine and phenylephrine lack substantial evidence of effectiveness and that Breon Laboratories has withdrawn its supplemental new drug application (NDA) providing for those combinations. The drugs are used for bronchial asthma.

DATE: Supplements to NDA's due on or before September 12, 1978.

ADDRESSES: Communications forwarded in response to this notice should be identified with the reference number DESI 12339, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Supplements to full new drug applications (identify with NDA number): Division of Surgical-Dental Drug Products (HFD-160), Room 18B-03, Bureau of Drugs.

Original abbreviated new durg applications and supplements thereto (identify as such): Division of Generic Drug Monographs (HFD-530), Bureau of Drugs.

Requests for the report of the National Academy of Sciences-National Research Council: Public Records and Document Center (HFC-18), Room 4-62.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFD-501), Bureau of Drugs.

FOR FURTHER INFORMATION CONTACT:

Herbert Gerstenzang, Bureau of Drugs (HFD-32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4650.

SUPPLEMENTARY INFORMATION: In a notice (DESI 12339) published in the FEDERAL REGISTER of November 3, 1970 (35 FR 16951), the Food and Drug Administration (FDA) announced its conclusion that there is a lack of substantial evidence that combination drug products containing isoetharine, phenylephrine, and thenyldiamine are effective as fixed combinations for their labeled claims. On September 9, 1974, a notice was published in the FEDERAL REGISTER (39 FR 32570), withdrawing approval of drug products containing this combination.

In response to the notice of November 3, 1970, Breon Laboratories supplemented its new drug application to revise the formulation of its products to contain only isoetharine and phenylephrine as active ingredients. The agency evaluated these products and on December 9, 1972, issued a notice in the FEDERAL REGISTER (37 FR 26356) classifying the following reformulated products as less than effective (probably effective).

NDA 12-339; Bronkometer containing isoetharine mesylate and phenylephrine hydrochloride; and Bronkosol containing isoetharine hydrochloride and phenylephrine hydrochloride.

On March 19, 1976 Breon submitted studies of the two-ingredient products. Breon concluded and FDA agrees, that the studies do not support the effectiveness of the combination products but support the effectiveness of the single ingredient isoetharine. On February 25, 1976, Breon supplemented its new drug application to delete phenylephrine from the formulation and on December 14, 1977, withdrew the sup-

plemental applicaton providing for the two-ingredient products.

Upon reevaluating all available data for these drug products, including the reports of the National Academy of Sciences-National Research Council, FDA has concluded that the products containing only isoetharine are effective as bronchodilators for bronchial asthma and for reversible bronchospasm that may occur in association with bronchitis and emphysema. The Academy had evaluated the original three-component products as "effective, but." It is clear that the Academy's reservations about effectiveness were based upon the presence of the ingredients thenyldiamine and phenylephrine. On December 1, 1977 a "permitted" letter was issued to Breon Laboratories for the single-ingredient products.

Accordingly, the previous formulations for these drug products lack substantial evidence of effectiveness and are no longer available and the status of the single-ingredient products described below is as follows.

NDA 12-339; Bronkometer containing isoetharine mesylate; and Bronkosol containing isoetharine hydrochloride, marketed by Breon Laboriatories, Inc., 90 Park Avenue, New York, N.Y. 10016.

Such drugs are regarded as new drugs (21 U.S.C. 321(p)). Supplemental new drug applications are required to revise the labeling in and to update previously approved applications providing for such drugs. An approved new drug application is a requirement for marketing such drug products.

In addition to the products specifically named above, this notice applies to any drug product that is not the subject of an approved new drug application and is identical to a product named above. It may also be applicable, under 21 CFR 310.6, to a similar or related drug product that is not the subject of an approved new drug application. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Such person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address given above).

A. *Effectiveness classification.* The Food and Drug Administration has reviewed all available evidence and concludes that the drug products are effective for the indication set forth in the labeling conditions below.

B. *Conditions for approval and marketing.* The Food and Drug Adminstration is prepared to approve abbreviated new drug applications and abbreviated supplements to previously approved new drug applications under conditions described herein.

1. *Form of drug.* The drug product is in aerosol or solution form suitable for administration by inhalation.

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The indication is as follows:

FOR USE AS A BRONCHODILATOR FOR BRONCIAL ASTHMA AND FOR REVERSIBLE BRONCHOSPASM THAT MAY OCCUR IN ASSOCIATION WITH BRONCHITIS AND EMPHYSEMA

3. *Marketing status.* a. Marketing of such drug products that are now the subject of a new drug application may be continued provided that, on or before September 12, 1978, the holder of the application has submitted (i) a supplement for revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted, and (ii) a supplement to provide updating information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD-356H (21 CFR 314.1(c)) to the extent required in abbreviated applications (21 CFR 314.1(f)).

b. Approval of an abbreviated new drug application (21 CFR 314.1(f)) must be obtained prior to marketing such products. Bioavailability regulations (21 CFR 320.21) published in the FEDERAL REGISTER of January 7, 1977, require any person submitting an abbreviated new drug application after July 7, 1977, to include either evidence demonstrating the in vivo bioavailability of the drug or information to permit waiver of the requirement, unless such evidence is already waived under section 320.22(b)(4). In order to permit waiver of this requirement as it pertains to the aerosol form, it will be necessary to demonstrate comparability as to the aerosol drug delivery system. Marketing prior to approval of a new drug application will subject such products, and those persons who caused the products to be marketed to regulatory action.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050-1053, as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.82).

Dated: July 5, 1978.

J. RICHARD CROUT,
Director, Bureau of Drugs.

[FR Doc. 78-19228 Filed 7-13-78; 8:45 am]

[4110-03]

[Docket No. 76N-0151; DESI 11961]

ISOCARBOXAZID

Rescission of Notice of Opportunity for Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice rescinds a notice of opportunity for hearing, published October 5, 1978, that proposed to withdraw approval of the new drug application (NDA 11-961) for Marplan (isocarboxazid) tablets, a drug used in the treatment of depression. In a notice appearing elsewhere in this issue of the FEDERAL REGISTER, the Commissioner of Food and Drugs announces the conditions under which isocarboxazid tablets may remain on the market pending completion and review of additional clincial studies concerning its effectiveness.

DATE: Effective July 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Ronald L. Wilson, Bureau of Drugs (HFD-32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice published in the FEDERAL REGISTER of October 5, 1976 (41 FR 43938) the Director of the Bureau of Drugs offered an opportunity for hearing on his proposal to issue an order withdrawing approval of the following new drug application: NDA 11-961; Marplan Tablets containing isocarboxazid; Roche Laboratories, Division of Hoffmann-La Roche, Inc., Roche Park, Nutley, N.J. 07110.

The basis of the proposed action was that there is lack of substantial evidence that the drug is effective for its claimed indications. In response to the notice, the firm submitted evidence documenting a medical need for the drug and indicated that it was making arrangements to conduct the necessary adequate and well-controlled studies to determine the effectiveness of the drug. Having been assured that such studies are to be conducted, the Commissioner of Food and Drugs has concluded that Marplan should be added to the list of drugs temporarily exempt from further implementation of the drug efficacy study pending completion and review of the required studies. A notice announcing that conclusion appears elsewhere in this issue of the FEDERAL REGISTER. Accordingly, the October 5, 1976 notice of opportunity for a hearing is hereby rescinded.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053, as amended (21 U.S.C. 355)), and under authority delegated to the Director of the Bureau of Drugs (21 CFR 5.82).

Dated: July 5, 1978.

J. RICHARD CROUT,
Director,
Bureau of Drugs.

[FR Doc. 78-19370 Filed 7-13-78; 8:45 am]

[4110-03]

[Docket No. 77N-0203; DESI 11961 and 12342]

ISOCARBOXAZID; TRANYLCYPROMINE SULFATE

Drugs for Human Use; Drug Efficacy Study Implementation; Permission for Drugs To Remain on the Market

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces the conditions under which isocarboxazid tablets may remain on or enter the market pending completion and review of clinical studies to determine its effectiveness in the treatment of depression. The notice also amends the previously published conditions for marketing tranylcypromine sulfate tablets, a drug also used in the treatment of depression. With respect to both drugs, the notice incorporates the recently announced new policy that allows marketing of a product under an abbreviated new drug application (ANDA), even though its sponsor is not conducting clinical studies necessary to prove its effectiveness, as long as at least one manufacturer is conducting the required studies.

DATES: Protocols due on or before August 14, 1978. Studies must be completed by July 14, 1980. ANDA's due October 12, 1978.

ADDRESSES: Communications in response to this notice should be identified with the NDA number (if any) and the following in a box in the upper portion of the cover letter: "PARAGRAPH XIV DRUG—CATEGORY XX 'ISOCARBOXAZID' or 'TRANYLCYPROMINE SULFATE'," as appropriate, directed to the attention of the office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20857. Abbreviated new drug applications: Division of Generic Drug Monographs (HFD-530), Bureau of Drugs. Requests for opinion of the applicability of this notice to a specific drug product: Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs. All other submissions required by this notice: Division of Neuropharmacological Drug Products, Psychopharmacology Unit (HFD-120), Room 10B-40, Bureau of Drugs.

FOR FURTHER INFORMATION CONTACT:

William C. Crabbs, Bureau of Drugs (HFD-120), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3810.

SUPPLEMENTARY INFORMATION: In a notice published in the FEDERAL REGISTER of December 14, 1972 (37 FR 26623), the Commissioner of Food and Drugs informed manufacturers of prescription drugs for human use of the future schedule for implementing the Drug Efficacy Study. That notice listed certain drugs, together with the justification for their medical need, that may remain on the market pending completion of scientific studies to determine effectiveness and provided for future additions to, or deletions from, that list. Isocarboxazid tablets is now being added to that list, as discussed below.

Marplan Tablets, containing isocarboxazid; Roche Laboratories, Division of Hoffmann-La Roche, Inc., Roche Park, Nutley, N.J. 07110 (NDA 11-961).

The new drug application for Marplan became effective July 1, 1959, on the basis of a demonstration of safety, prior to enactment of the Drug Amendments of 1962, which added to the Federal Food, Drug, and Cosmetic Act the requirement that substantial evidence of effectiveness be shown. By letters of January 17, 1966, and August 5, 1968, the Food and Drug Administration (FDA) approved supplements to the new drug application providing for revised labeling of the drug. Those letters inadvertently failed to state that the approvals were not based upon a full review of the effectiveness of the drug. In light of the approval of January 17, 1966, Roche Laboratories took the position that the effectiveness issue had been resolved and that the firm need not submit reports to FDA as had been requested in a notice published in the FEDERAL REGISTER of July 9, 1966. By letter of March 18, 1971, FDA informed Roche Laboratories that the letters approving the supplements without qualification were in error by not stating that the application had not been completely reviewed for effectiveness. The March 18, 1971 letter stated that the application had since been reviewed and that it failed to contain substantial evidence of effectiveness, and requested Roche Laboratories to submit data meeting the requirements for adequate and well-controlled clinical investigations to facilitate the agency's review. Such data were not submitted in response to that letter.

Reviews of the literature on Marplan were conducted independently by a member of the Bureau of Drugs and by the chairman of the FDA Psychopharmacological Agents Advisory Committee. The reviewers independently examined the studies in two bibliographies relevant to the question of Marplan's effectiveness: One submitted by Roche Laboratories, and one compiled by the FDA medical library. There was a high degree of agreement between the independent reviewers as to which studies satisfied even the most minimal standards for a well-controlled scientific investigation; the eight studies that did so were independently assessed in detail. These eight controlled studies, while providing some suggestion of effectiveness, do not constitute substantial evidence that Marplan is an effective antidepressant. While four of the studies appear to show some evidence of an antidepressant effect, four others show no such effect, and all of them, considered as a group, do not provide substantial evidence of effectiveness as defined in the statute and the regulations. Accordingly, a notice of opportunity for hearing on a proposal to withdraw approval of the new drug application was published in the FEDERAL REGISTER of October 5, 1976 (41 FR 43938, DESI 11961). The notice specified why each of the eight studies referred to above fails to meet the requirements of the statute and regulations.

On November 3, 1976, the firm requested a hearing and on December 3, 1976, submitted evidence to document a medical need for the drug and indicated its willingness to do the necessary clinical studies.

The Commissioner now concludes that, in view of sufficient justification of the medical need for the drug and Roche's assurance that the necessary clinical studies will be undertaken, isocarboxazid tablets should be permitted to remain on the market pending completion and review of such studies. A notice appearing elsewhere in this issue of the FEDERAL REGISTER rescinds the October 5, 1976, notice of opportunity for hearing.

A notice published in the FEDERAL REGISTER of September 2, 1977 (42 FR 44286, DESI 12342), added tranylcypromine sulfate (another antidepressant drug) as Category XX to the list of drugs that may remain on the market (paragraph 3 of the December 14, 1972, notice as amended). The September 2, 1977, notice required that clinical studies of effectiveness of tranylcypormine sulfate be completed within 12 months after starting. Pursuant to the notice, clinical studies are underway by Smith Kline & French Laboratories on Parnate (tranylcypromine sulfate). The firm has informed FDA that the investigators will need

approximately 24 months additional time within which to complete the ongoing studies. Based upon previous experience with monoamine oxidase inhibitors (MAOI), the Commissioner finds that this is reasonable.

A notice was published in the FEDERAL REGISTER of February 17, 1978 (43 FR 7044), announcing a new policy governing conditions for marketing prescription drug products that have been allowed to remain on the market pending completion of scientific studies to determine their effectiveness. The new policy allows a drug to remain on or enter the market, under certain conditions, whether or not its manufacturer is conducting clinical studies on that particular drug product, as long as some manufacturer is conducting the necessary studies on a drug product to which the same conclusions about effectiveness would ultimately apply.

The notice of September 2, 1977, concerning tranylcypromine sulfate is now amended to read as follows in order to include isocarboxazid and to implement the new policy referred to above:

XX. MONOAMINE OXIDASE INHIBITORS

TRANYLCYPROMINE SULFATE

In a notice published in the FEDERAL REGISTER of September 1, 1970 (35 FR 13855), the Food and Drug Administration announced its conclusion that Parnate Tablets (tranylcypromine sulfate) (NDA 12-342) is less than effective (probably effective) for symptomatic relief in patients who have severe depression, are not candidates for electroconvulsive therapy, have failed to respond satisfactorily to other antidepressant therapy, and are hospitalized or under similar close supervision. Information subsequently submitted by Smith Kline & French Laboratories, holder of the NDA, provided suggestive evidence of efficacy, but did not meet the statutory criteria for substantial evidence of effectiveness. It has been determined that adequate and well-controlled clinical studies can be successfully conducted with such drugs without violating ethical precepts or patients' rights. There is adequate justification of the medical need for tranylcypromine sulfate in patients who have not responded to other antidepressant therapy. Tranylcypromine is one of a small number of drugs which reputedly exert antidepressant action through inhibition of the enzyme monoamine oxidase. Whereas the majority of patients respond to the administration of tricyclic antidepressants, which offer a greater ease of clinical administration and do not require the drug and dietary restrictions necessary to the safe use of monoamine oxidase inhibitors, some patients do not respond to tricyclic drugs and require a trial with other available drug classes or modalities of antidepressant therapy. Smith Kline & French has assured the agency that it intends to conduct the necessary studies. The Commissioner of Food and Drugs concludes, therefore, that tranylcypromine sulfate tablets may remain on or enter the market pending completion and review of studies to determine effectiveness, provided the conditions set forth below are met.

ISOCARBOXAZID

In a notice published in the FEDERAL REGISTER of October 5, 1976 (41 FR 43938), the Food and Drug Administration announced its conclusion that Marplan Tablets (isocarboxazid) (NDA 11-961) lacks substantial evidence of effectiveness for use in the treatment of depression. An independent review of literature on Marplan provided suggestive evidence of effectiveness but did not meet the statutory criteria for substantial evidence. It has been determined that adequate and well-controlled clinical studies can be successfully conducted with such drugs without violating ethical precepts or patients' rights. There is adequate justification of the medical need for isocarboxazid in patients who have not responded to other antidepressant therapy. Isocarboxazid is one of a small number of drugs that reputedly exert anitdepressant action through inhibition of the enzyme monoamine oxidase. Whereas the majority of patients respond to the administration of tricyclic antidrepressants, which offer a greater ease of clinical administration and do not require the drug and dietary restrictions that are necessary for the safe use of monoamine oxidase inhibitors, some patients do not respond to tricyclic drugs and require a trial with other available drug classes or modalities of antidepressant therapy. Roche Laboratories has assured the agency that it intends to conduct the necessary studies. The Commissioner concludes, therefore, that isocarboxazid tablets may remain on or enter the market pending completion and review of studies to determine effectiveness, provided the conditions set forth below are met.

The specific conditions under which these drugs may remain on or enter the market are as follows:

A. REQUIREMENTS FOR PRODUCTS NOW SUBJECTS OF APPROVED NDA'S

Proceedings to withdraw approval of any NDA that has a "deemed approved" status on July 14, 1978 will not be initiated provided that:

1. The drug is labeled as probably effective for symptomatic relief of severe reactive or endogenous depression in hospitalized or closely supervised patients who have not responded to other antidepressant therapy.

2. On or before August 14, 1978, any applicant who intends to conduct clinical studies of effectiveness has submitted protocols to the Division of Neuropharmacological Drug Products, Psychopharmacology Unit (HFD-120) for at least two adequate and well-controlled studies by independent investigators or a multiclinic study in which the data of at least three investigators can be evaluated independently, to determine whether or not the product is effective. The Bureau of Drugs will review the submitted protocols within a 30-day period and will provide the applicant notice of approval or comments.

3. Within 60 days after receipt of the Bureau's approval or comments on the protocol, studies are in progress and the applicant so notifies the Division of Neuropharmacological Drug Products in writing.

4. At 6-month intervals after studies have begun, the applicant submits a progress report stating the number of patients and investigators in the studies, the number of studies completed, and the number continuing.

5. By July 14, 1980, the applicant submits data on the completed studies to the Division of Neuropharmacological Drug Products. If the studies are completed before that time, the results shall be submitted within 30 days after their completion.

B. REQUIREMENTS FOR PRODUCTS NOT NOW SUBJECTS OF APPROVED NDA'S

Regulatory action to remove from the market any such product that was marketed comercially on July 14, 1978, will not be taken provided that:

1. (a) The sponsor either is now conducting or intends to conduct clinical studies of the product in compliance with the requirements described in A above; or (b) if the sponsor elects not to conduct clinical studies, at least one other manufacturer is conducting such studies of a drug product containing isocarboxazid or tranylcypromine sulfate, as appropriate, to which the same effectiveness conclusions would ultimately apply.

2. By October 12, 1978, the sponsor submits an ANDA (21 CFR 314.1(f)) for the product to the Division of Generic Drug Monographs (HFD-530), Bureau of Drugs. If the information in the ANDA is complete and satisfactory, it will be conditionally approved, pending results of clinical studies. Such conditionally approved products will have the same legal status as products that are subjects of "deemed approved" applications reviewed in the Drug Efficacy Study; that is, as products for which safety is not in question but for which effectiveness has not been proven.

3. Labeling is in accord with that specified in A.1 above.

4. The FDA has not issued a nonapprovable letter to the applicant concerning the ANDA.

5. The ANDA is conditionally approved by April 10, 1979.

C. REQUIREMENTS FOR PRODUCTS ENTERING THE MARKET AFTER JULY 14, 1978

Regulatory action will not be taken against a product that enters the market after July 14, 1978, provided that each of the following conditions is met:

1. There is at least one ongoing study of another drug product containing isocarboxazid or tranylcypromine sulfate, as appropriate, and the results of the study would ultimately apply to the product intended to be placed on the market.

2. Labeling is in accord with that specified in A.1 above.

3. If the product is to be placed on the market on or before October 12, 1978, then (a) the sponsor submits an ANDA (21 CFR 314.1(f)), on or before that date, (b) the FDA does not issue a nonapprovable letter to the applicant regarding such application, and (c) the ANDA is conditionally approved on or before April 10, 1979.

4. If the product is to be placed on the market after October 12, 1978, but on or before April 10, 1979, (a) the sponsor submits an ANDA prior to marketing (b) the FDA does not issue a nonapprovable letter to the applicant regarding such application, and (c) the ANDA is conditionally approved on or before April 10, 1979.

5. If the product is to be placed on the market after April 10, 1979, the sponsors submits and obtains conditional approval of an ANDA prior to marketing the product.

The Food and Drug Administration intends to initiate prompt regulatory action against all affected products that fail to comply with this notice under Category I of the administrative guideline "Marketed New Drugs Without Approved NDA's or ANDA's," the availability of which was announced in the FEDERAL REGISTER of September 23, 1976 (41 FR 41770).

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 505, 701, 52 Stat. 1052-1053, as amended, 1055-1056, as amended (21 U.S.C. 355, 371)), the Administrative Procedure Act (5 U.S.C. 553, 554), and under authority delegated to the Commissioner (21 CFR 5.1).

Dated: July 10, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-19374 Filed 7-13-78; 8:45 am]

[4110-03]

[FDA-225-78-4003]

QUALITY DRUG SUPPLIERS

Memorandum of Understanding With the State of New York Office of General Services

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has executed a memorandum of understanding with the State of New York Office of General Services. The purpose of the understanding is to set forth cooperative working arrangements in finding suppliers for drugs of acceptable quality for distribution in the State's centralized procurement system.

DATES: The agreement became effective June 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Frank Flaherty, Medical Products Quality Assurance Staff (HFO-25), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3590.

SUPPLEMENTARY INFORMATION: Pursuant to the notice published in the FEDERAL REGISTER of October 3, 1974 (39 FR 35697), stating that future memoranda of understanding and agreements between FDA and others would be published in the FEDERAL REGISTER, the Commissioner of Food and Drugs is issuing the following memorandum of understanding:

MEMORANDUM OF UNDERSTANDING BETWEEN THE STATE OF NEW YORK OFFICE OF GENERAL SERVICES AND THE FOOD AND DRUG ADMINISTRATION

I. *Purpose.* To describe an agreement between the Food and Drug Administration (FDA) and the State of New York Office of General Services under which FDA will furnish to the State information regarding the capability of prospective suppliers to supply drugs (as defined in 21 U.S.C. 321(g)) of acceptable quality for distribution in the State's centralized procurement system.

II. *Background.* The State of New York Office of General Services, through a centrally managed procurement system, purchases large quantities of drugs for distribution to several hundred public medical care facilities. The State receives bid on its drug contract proposals from prospective suppliers nationwide. State procurement law requires that the contract be awarded to the lowest responsible bidder who can meet the terms and conditions of the particular proposal and specifications. Before a contract is awarded, one condition which must be satisfactory to the contracting officer is that a prospective supplier has the capability to furnish to the State a drug product of acceptable quality. The State contracting officer desires to improve his means for determining whether a low bidder, regardless of company location, is an acceptable supplier (from a quality assurance standpoint) of the particular drug he proposes to sell to the State.

Under the governmentwide quality assurance program, whereby FDA provides drug qualtiy assurance support to Federal purchasing agencies, FDA has a system for effectively furnishing procurement-related quality assurance information to contracting officers.

The State Office of General Services requested the FDA to make available to the State's drug procurement system certain quality assurance information, in a manner analogous to the support FDA provides to Federal purchasing agencies under the governmentwide quality assurance program for drugs. FDA has agreed to provide quality assurnace information as outlined in this understanding, in a 1-year pilot test of the concept of FDA support of State drug procurement systems. At the conclusion of the 1-year period, FDA will decide whether to participate any further in this type of program on a long-term basis, with New York State or any other non-Federal agency.

III. *Substance of agreement.* The State of New York Office of General Services and the Food and Drug Administration agree:

A. FDA's current good manufacturing practice regulations (CGMPR) (21 CFR Parts 210 and 211) will be the single quality standard to be applied industrywide for the manufacture, processing, packing, or holding of drugs procured under the State's centralized drug procurement program;

B. FDA will be the agency responsible for administrative interpretation and enforcement of the CGMPR's;

C. FDA will furnish to the State, on written request, a quality assurance evaluation of a firm's capability to supply to the State a product which meets quality standards and is in compliance with laws FDA enforces. The State's request will identify the single low bidder responding to each solicitation and will provide FDA the name and address of the establishment of the prospective primary contractor, the name, address, and role of any subcontractor(s), and a complete description of the drug being procured;

D. FDA will not provide an evaluation of the quality capability of a firm for procurement if the firm is not in business, or if the nature of the firm's operations does not allow a proper evaluation to be made of the firm's ability to produce a product of acceptable quality;

E. Compliance with the requirements of the Federal Food, Drug, and Cosmetic Act (Act) and regulations will be the criterion by which FDA determines whether a vendor is qualified as to his ability to produce the drugs to be procured by the State. For those products for which there are official published specifications of quality, or for which there are approved new drug applications (NDA's) or abbreviated new drug applications (ANDA's), approved antibiotic form 6's or FDA licensing, the quality assurance requirements therein will be the quality assurance criteria for procurement purposes;

F. FDA does no anticipate the need to perform inspectional or analytical work solely to provide a preaward quality evaluation to the State as part of this understanding; inspections or analyses performed as part of regular FDA operations will provide the information upon which FDA's quality evaluations will be based. Scheduling and performing such work will continue to be an FDA responsibility;

G. The State will be responsible for any postaward sampling and testing of drugs which it may choose to do as part of its procurement process;

H. The State will inform FDA immediately whenever any information is received which may indicate there is a problem with the quality of any drug. All quality complaints will be forwarded directly to FDA. FDA will provide the State with the results of FDA's evaluation of each complaint; and,

I. FDA is prepared to provide training in drug analysis to State chemists and to assist the State with testing of drugs. The amount of training and assistance to be provided to the State will be determined by FDA in consultation with the State.

IV. *Name and address of participating activities.* A. State of New York Office of General Services, Tower Building, Empire State Plaza, Albany, N.Y. 12242.

B. Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20857.

V. *Liaison officers.* A. For the State of New York Office of General Service—Mr. Richard J. Higgins, Director of Standards and Purchase, Executive Department, Tower Building, Empire State Plaza, Albany, N.Y. 12242, telephone 518-474-6710.

B. For the Food and Drug Administration—Mr. Francis J. Flaherty, Director, Medical Products Quality Assurance Staff, Room 15-22, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, telephone 301-443-3590.

VI. *Period of agreement.* This understanding, when accepted by both parties, will have an effective period of performance from date of signature until 1 year later, and may be modified by mutual consent by both parties or may be terminated by either party upon a sixty (60) day advance written notice to the other.

Dated: June 7, 1978.

Approved and accepted for the Food and Drug Administration.

DONALD KENNEDY,
Commissioner,
Food and Drug Administration.

Dated: June 7. 1978.

Approved and accepted for the State of New York.

HUGH L. CAREY,
Governor,
State of New York.

Effective date. This memorandum of understanding became effective June 7, 1978.

Dated: July 5, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner
for Regulatory Affairs.

[FR Doc. 78-19140 Filed 7-13-78; 8:45 am]

[1505-01]

[Docket No. 75P-0361]

STANDARDS OF IDENTITY FOR BAKERY PRODUCTS

Hearing

Correction

In FR Doc. 78-14724, appearing at page 22785 in the issue for Friday, May 26, 1978 on page 22785, second column, in the SUPPLEMENTARY INFORMATION, 21st line of the first paragraph, "de-glycerides" should read "di-glycerides".

[4110-03]

[Docket No. 77N-0399]

THE UPJOHN CO.

Neomycin-Sulfonamide-Kaolin-Pectin Tablets; Withdrawal of Approval

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document withdraws approval of a new animal drug application (NADA) for use of neomycin-sulfonamide-kaolin-pectin tablets. This action is being taken because the sponsor of the NADA has not filed an appearance in response to a notice of opportunity for hearing on a proposal to withdraw the application.

EFFECTIVE DATE: July 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Donald Gable, Bureau of Veterinary Medicine (HFV-100), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4313.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of December 30, 1977 (42 FR 65270), the Food and Drug Administration published a notice of an opportuinity for hearing on a proposal to withdraw approval of NADA 9-696, for the product Kaobiotic Tablets, held by the Upjohn Co., Kalamazoo, Mich. 49001. Each tablet contains 8.125 miligrams of neomycin sulfate (equivalent to 5.68 milligrams of neomycin base), 244 milligrams of sulfaguanidine, 16.25 miligrams of sulfamerazine, 16.25 milligrams of sulfadiazine, 16.25 milligrams of sulfathiazole, 729 milligrams of kaolin, and 16.25 milligrams of pectin. The product is recommended for oral administration in treating bacterial diarrhea and enteritis in all species of animals. Grounds for the proposed withdrawal were that new information about the product, evaluated together with the evidence available at the time of its approval, showed a lack of substantial evidence of its purported or represented effect or its safe use under the conditions prescribed, recommended, or suggested in the label.

The Upjohn Co. failed to file a timely written appearance or request for hearing in response to the notice within the 30-day period provided, as required by § 514.200 *Contents of notice of opportunity for a hearing* (21 CFR 514.200). Such failure is construed as a decision by the firm not to avail itself of the opportunity for hearing and is grounds for entering a final order without further notice.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and in accordance with § 514.155 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that NADA 9-696 and all supplements and amendments thereto are hereby withdrawn, effective July 14, 1978.

Dated: July 7, 1978.

C. D. VAN HOUWELING,
Director, Bureau of
Veterinary Medicine.

[FR Doc. 78-19373 Filed 7-13-78; 8:45 am]

[4110-83]

Health Resources Administration

REDESIGNATION OF IOWA HEALTH SERVICE AREAS 1 AND 2 AND NEBRASKA HEALTH SERVICE AREA 3

In accordance with section 1511(b)(4) of the Public Health Service Act as amended by Pub. L. 93-641, the Secretary of Health, Education, and Welfare has determined that Iowa health service areas should be revised to include Adams and Taylor Counties in the interstate area composed of Iowa health service area 2 and Nebraska health service area 3 and delete Adams and Taylor Counties from Iowa health service area 1. This revision constitutes approval of a redesignation request initiated by the Governor of Iowa on January 5, 1978, with the concurrence of the Governor of Nebraska. This request complied with all the requirements of the health service area redesignation guidelines published in the FEDERAL REGISTER, Vol. 41, No. 180, September 15, 1976.

Accordingly, Iowa health service areas 1 and 2 and Nebraska health service area 3, approved by the Secretary on August 1, 1975, have been found to no longer meet the requirements of section 1511(a) of the Public Health Service Act and are revised as follows:

Health service area 1 in Iowa and health service area 4 in Nebraska constitute a single interstate health service area comprised of the following counties:

In Iowa: Lyon, Palo Alto, Emmet, Floyd, Worth, Clayton, Winneshiek, Buena Vista, Pocahontas, Sac, Franklin, Hamilton, Hardin, Dubuque, Monona, Jones, Greene, Audubon, Tama, Poweshiek, Iowa, Louisa, Union, Warren, Monroe, Keokuk, Van Buren, Des Moines, Decatur, Clay, Dickinson, Cerro Gordo, Winnebago, Fayette, Howard, Cherokee, Sioux, Ida, Wright, Webster, Bremer, Buchanan, Delaware, Linn, Carroll, Story, Marshall, Polk, Jasper, Clinton, Cass, Madison, Lucas, Mahaska,

Jefferson, Henry, Ringgold, Davis, O'Brien, Osceola, Hancock, Kossuth, Chickasaw, Mitchell, Plymouth, Allamakee, Woodbury, Humboldt, Calhoun, Butler, Grundy, Black Hawk, Benton, Crawford, Jackson, Boone, Guthrie, Dallas, Johnson, Cedar, Adair, Clarke, Marion, Wapello, Washington, Lee, Wayne, and Appanoose.

In Nebraska: Dakota.

Health service area 2 in Iowa and health service area 3 in Nebraska constitute a single interstate health service area comprised of the following counties:

In Iowa: Harrison, Shelby, Pottawattamie, Mills, Montgomery, Fremont, Page, Adams, and Taylor.

In Nebraska: Dodge, Washington, Douglas, and Sarpy.

Dated: July 7, 1978.

HENRY A. FOLEY,
Administrator.

[FR Doc. 78-19286 Filed 7-13-78; 8:45 am]

[4110-12]

National Center for Education Statistics

CAPACITY BUILDING FOR STATISTICAL ACTIVITIES IN STATE EDUCATIONAL AGENCIES

National Center for Education Statistics; Notice of Closing Date for Receipt of Applications for Fiscal Year 1978

Notice is hereby given that, pursuant to the authority contained in section 406(b)(3) and (e) of the General Education Provisions Act (20 U.S.C. 1221-1(b)(3) and (e)), applications are being accepted for the Capacity-Building Program for Statistical Activities in State Educational Agencies. The National Center for Education Statistics is making grants under this program to State educational agencies to develop or enhance their long-term statistical capabilities.

Closing date: August 14, 1978.

A. *Application forms and information:* Application forms will be mailed directly to all State educational agencies. Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages.

B. *Applications sent by mail:* An application sent by mail should be addressed to: U.S. Office of Education, Application Control Center, Attention 13.922, Washington, D.C. 20202. Applications that are mailed must be postmarked on or before August 14, 1978. Proof of timely mailing must consist of a legible official U.S. Postal Service postmark on the wrapper or envelope, or an insured, registered or certified mail receipt stamped by the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.

The Administrator of the National Center for Education Statistics encourages applicants to use first class mail and to consider the use of registered or insured mail to insure reliable proof of timely mailing.

C. *Hand-delivered applications:* An application to be hand-delivered must be taken to the U.S. Office of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets SW., Washington, D.C. Hand-delivered applications will be accepted daily between the hours of 8 a.m. and 4 p.m. Washington, D.C. time except Saturdays, Sundays or Federal holidays. Hand-delivered applications will not be accepted after 4 p.m. August 14, 1978.

D. *Program information:* Grants under the program are intended to develop or enhance the long-term capability of the State educational agency to collect, process, analyze, or report statistical data about elementary/secondary education. Grants may focus on a reduction of data burden; improvement in the timeliness of data reporting; improvement in the quality, comparability, or utility of data; increase in analytical capability; improvement in the flow of information to local educational agencies or other agencies of the State; or similar statistical objectives.

"State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

The Administrator of the National Center for Education Statistics has allocated $300,000 for the support of this program in fiscal year 1978. It is anticipated that only about six (6) grants will be awarded in fiscal year 1978.

E. *For further information contact:* Donna Mertens, Federal/State Coordination Branch, National Center for Education Statistics, 400 Maryland Avenue SW., Washington, D.C. 20202; 202-245-7813.

F. *Applicable regulations:* The regulations applicable to this program are the Office of Education General Provisions Regulations (45 CFR Part 100a) and the regulation for Capacity Building for Statistical Activities in State Educational Agencies published in this issue of the FEDERAL REGISTER. The Capacity Building regulatin will be included in the application package.

(20 U.S.C. 1221-1(b)(3) & (e)) (Catalog of Federal Domestic Assistance Number 13.922; Capacity Building for Statistical Activities in State Educational Agencies.)

Dated: June 16, 1978.

MARIE D. ELDRIDGE,
Administrator, National Center for Education Statistics.

[FR Doc. 78-19459 Filed 7-13-78; 8:45 am]

[4110-08]

National Institutes of Health

REPORT ON BIOASSAY OF ACRONYCINE FOR POSSIBLE CARCINOGENICITY

Availability

Acronycine (CAS 7008-42-6) has been tested for cancer-causing activity with rats and mice in the Carcinogenesis Testing Program, Division of Cancer Cause and prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay of acronycine for possible carcinogenicity was conducted by administering the test chemical by intraperitoneal injection to Sprague-Dawley rats and B6C3F1 mice.

Initially, groups of 35 rats of each sex were administered acronycine at one of two doses, either 7.5 or 15 mg/kg body weight, in a vehicle composed of 0.05 percent polysorbate 80 in phosphate-buffered saline. Control groups of each sex consisted of 10 untreated rats (untreated controls) and 10 rats injected with the vehicle (vehicle controls). Because of high mortality rates in the dosed animals, new dosed groups of 35 rats of each sex were started later as a dose of 3.75 mg/kg. Additional groups of 10 untreated and 10 vehicle controls of each sex were also started. The rats were administered the acronycine or the vehicle for 51 or 52 weeks, then observed for an additional 28-30 weeks. All surviving rats were killed at 80-82 weeks.

Initially, groups of 35 mice of each sex were administered acronycine at one of two doses, either 12.5 or 25 mg/kg body weight, in a vehicle composed of 0.05 percent polysorbate 80 in phosphate-buffered saline. Control groups of each sex consisted of 10 untreated mice (untreated controls) and 10 mice injected with the vehicle (vehicle controls). Because of high mortality rates in the dosed animals, two additional dosed groups were started later: 35 mice of each sex at 6 mg/kg and 40 mice of each sex at 2 mg/kg, together with untreated controls and 10 vehicle controls of each sex for the groups dosed at 6 mg/kg, and 20 untreated controls and 20 vehicle controls for the groups dosed at 2 mg/kg. Periods of administration of the chemical to the mice varied from 25 weeks to 92 weeks, depending on toxicity or length of time of survival. Surviving control animals were killed at 78-105 weeks.

Acronycine was toxic to rats and mice of each sex at the doses used in this bioassay, as shown by the high mortality rates in all but the low-dose groups and by the lower mean body weights in dosed rats and mice at all doses throughout most of the bioassay. Because of this high number of deaths, time-adjusted statistics are used for the analyses of all incidences of tumors.

It is concluded that under the conditions of this bioassay, the low survival of the dosed and control mice and the possible procedural problems associated with the intraperitoneal injection of the chemical did not allow a determination to be made of the carcinogenicity of acronycine in this species. In Prague-Dawley rats, acronycine in the vehicle of 0.05 percent polysorbate 80 in phosphate-buffered saline was carcinogenic, producing tumors of the mammary gland in females, osteosarcomas in males, and sarcomas and other related tumors of the peritoneum in both males and females.

Single copies of the report are available from the Office of Cancer Communications, National Cancer Institute, Building 31, room 10A21, National Institutes of Health, Bethesda, Md. 20014.

Catalogue of Federal Domestic Assistance Program No. 13.393, Cancer Cause and Prevention Research).

Dated: July 3, 1978.

DONALD S. FREDRICKSON,
Director,
National Institutes of Health.

[FR Doc. 78-19377 Filed 7-13-78; 8:45 am]

[4110-08]

REPORT ON BIOASSAY OF 4-CHLORO-O-PHENYLENEDIAMINE FOR POSSIBLE CARCINOGENICITY

Availability

4-Chloro-o-phenylenediamine (CAS 95-83-0) has been tested for cancer-causing activity with rats and mice in the Carcinogenesis Testing Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay for possible carcinogenicity of technical-grade 4-chloro-o-phenylenediamine was conducted using Fischer 344 rats and B6C3F1 mice. 4-Chloro-o-phenylenediamine was administered in the feed, at either of two concentrations, to groups of 49 or 50 male and 50 female animals of each species. For male and female rats, the high and low time-weighted average dietary concentrations of 4-chloro-o-phenylenediamine were 1.0 and 0.5 percent, respectively. For male and female mice, the high and low time-weighted average dietary concentrations were 1.4 and 0.7 percent, respectively. After a 78-week period of chemical administration, observation of the rats continued for up to an additional 28 weeks, and observation of the mice continued for up to an additional 18 weeks. Fifty animals of each species and sex were placed on test as controls for the chronic bioassay.

There was a statistically significant positive association between increased dosage and accelerated mortality in female rats and male mice; however, survival among all groups was adequate for meaningful statistical analysis of late-developing tumors.

It is concluded that under the conditions of this bioassay 4-chloro-o-phenylenediamine was carcinogenic in Fischer 344 rats and B6C3F1 mice, inducing tumors of the urinary bladder and forestomach in both sexes of rats and hepatocellular carcinomas in both sexes of mice.

Single copies of the report are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Md. 20014.

(Catalogue of Federal Domestic Assistance Program No. 13.393, Cancer Cause and Prevention Research).

Dated: July 3, 1978.

DONALD S. FREDRICKSON,
Director,
National Institutes of Health.

[FR Doc. 78-19384 Filed 7-13-78; 8:45 am]

[4110-08]

REPORT ON BIOASSAY OF PHENESTERIN FOR POSSIBLE CARCINOGENICITY

Availability

Phenesterin (CAS 3546-10-9) has been tested for cancer-causing activity with rats and mice in the Carcinogenesis Testing Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay of phenesterin for possible carcinogenicity was conducted by administering the chemical by gavage to Sprague-Dawley rats and B6C3F1 mice.

Groups of 35 rats of each sex were administered phenesterin at one of two doses, either 5 or 10 mg/kg body weight, three times per week for 52 weeks, then observed for an additional 32 or 33 weeks. The vehicle used was 0.05 percent polysorbate 80 in buffered saline. Controls consisted of groups of 10 rats of each sex which received the vehicle (vehicle control) and 10 rats of each sex which were untreated (untreated control). All surviving rats were killed at 84 or 85 weeks.

Groups of 35 mice of each sex were administered the chemical at one of two doses, either 15 or 30 mg/kg body weight, three times per week for 52 weeks. The males receiving 15 mg/kg were observed for an additional period of 29 weeks, and those surviving to this time were then killed; the animals of the remaining groups were observed for additional periods of only 10-22 weeks, due to early deaths. Seventy-seven weeks after the foregoing groups were started, additional groups of 40 mice of each sex were started and were administered the chemical at 7 mg/kg body weight three times per week; administration of the chemical terminated at week 102 for the males and at week 88 for the females, due to deaths of all females at this time. Controls for the low-dose (7 mg/kg) groups of mice consisted of groups of 20 mice of each sex which received the vehicle (vehicle control) and 20 mice of each sex which were untreated (untreated control); controls for the mid-dose (15 mg/kg) and the high-dose (30 mg/kg) controls consisted of groups of 15 mice of each sex similarly receiving the vehicle or untreated. All surviving low-dose controls were killed at 104 weeks, and all surviving mid- and high-dose controls were killed at 81-84 weeks.

Phenesterin was toxic to rats and mice at the doses used, as shown by reduced mean body weights and survival. Time-adjusted analyses were used for evaluation of incidences of tumors in the female mice.

It is concluded that under the conditions of this bioassay, phenesterin was carcinogenic in female Sprague-Dawley rats, producing adenocarcinomas of the mammary gland, and in both sexes of B6C3F1 mice, producing alveolar/bronchiolar carcinomas, hematopoietic tumors, and myocardial sarcomas.

Single copies of the report are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Md. 20014.

(Catalog of Federal Domestic Assistance Program No. 13.393, Cancer Cause and Prevention Research.)

Dated: July 3, 1978.

DONALD S. FREDRICKSON,
Director,
National Institutes of Health.

[FR Doc 78-19385 Filed 7-13-78; 8:45 am]

[4110-08]

REPORT ON BIOASSAY OF 1,1,2-TRICHLOROETHANE FOR POSSIBLE CARCINOGENICITY

Availability

1,1,2-Trichloroethane (CAS 79-00-5) has been tested for cancer-causing activity with rats and mice in the Carcinogenesis Testing Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay of technical-grade 1,1,2-trichloroethane for possible carcinogenicity was conducted using Osborne-Mendel rats and B6C3F1 mice. 1,1,2-Trichloroethane in corn oil was administered by gavage, at either of two dosages, to groups of 50 male and 50 female animals of each species, 5 days a week for a period of

78 weeks, followed by an observation period of up to 35 weeks for rats and up to 13 weeks for mice.

The high and low time-weighted average dosages of 1,1,2-trichloroethane were, respectively, 92 and 46 mg/kg/day for male and female rats, and 390 and 195 mg/kg/day for the male and female mice.

For each species, 20 animals of each sex were placed on test as vehicle controls. These animals were gavaged with corn oil at the same rate as the high dose group of the same sex. Twenty animals of each sex were placed on test as untreated controls for each species. These animals were not intubated.

The results of this study do not provide convincing evidence for the carcinogenicity of 1,1,2-trichloroethane in Osborne-Mendel rats. Under the conditions of this bioassay 1,1,2-trichloroethane is carcinogenic in B6C3F1 mice, causing hepatocellular carcinomas and adrenal pheochromocytomas.

Single copies of the report are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Md. 20014.

(Catalog of Federal Domestic Assistance Program Number 13.393, Cancer Cause and Prevention Research.)

Dated: July 3, 1978.

DONALD S. FREDRICKSON,
Director,
National Institutes of Health.

[FR Doc. 78-19378 Filed 7-13-78; 8:45 am]

[4110-08]

NCI LAETRILE RETROSPECTIVE ANALYSIS EVALUATION COMMITTEE (TEMPORARY)

Establishment

The Director, National Institutes of Health, announces the establishment on June 26, 1978, of the advisory committee indicated below by the Director, National Cancer Institute, under the authority of Section 410(a)(3) of the Public Health Service Act (42 USC 286d). Such advisory committees shall be governed by the provisions of the Federal Advisory Committee Act, as amended (Pub. L. 92-463) setting forth standards governing the establishment and use of advisory committees.

Name: NCI Laetrile Retrospective Analysis Evaluation Committee (Temporary)

Purpose: The Committee will review the case histories collected in the NCI Retrospective Laetrile Evaluation and will develop a consensus on the possible objective benefits demonstrated by Laetrile therapy. Authority for this committee will expire September 1, 1978.

Dated: June 30, 1978.

DONALD S. FREDRICKSON,
Director,
National Institutes of Health.

[FR Doc. 78-19388 Filed 7-13-78; 8:45 am]

[4110-08]

RECOMBINANT DNA MOLECULE PROGRAM ADVISORY COMMITTEE

Nominations for Committee Positions

The National Institutes of Health (NIH) invites the submission of nominations for positions on the Recombinant DNA Molecule Program Advisory Committee (RAC) as openings become available.

The RAC was established to advise the Secretary of HEW, the Assistant Secretary for Health, and the Director, NIH, on the potential biological and ecological hazards of recombinant DNA research, on procedures designed to prevent the spread within human and other populations of organisms carrying such molecules, and on guidelines to be followed by investigators working with such organisms. The RAC deals primarily with the scientific and technical issues associated with recombinant DNA research. Thus, it is essential that this Committee have the technical expertise necessary to interpret, develop, and modify the NIH Guidelines for Research Involving Recombinant DNA Molecules. However, nominations may include public members, for it is also essential that discussion bridge both scientific and public policy implications of recombinant DNA research. Additional information on the functions of the RAC may be found in the NIH Guidelines for Research Involving Recombinant DNA Molecules (41 FR 27902) and in the Proposed Revised Guidelines (42 FR 49596).

Respondents must document the qualifications of each individual suggested (attachment of curriculum vitae and bibliography, et cetera).

Nominations for positions on the RAC should be forwarded to: Dr. Donald S. Fredrickson, Director, National Institutes of Health, Building 1, room 124, Bethesda, Md. 20014

Dated: June 30, 1978.

DONALD S. FREDRICKSON,
Director,
National Institutes of Health.

[FR Doc. 78-19386 Filed 7-13-78; 8:45 am]

[4110-08]

NATIONAL INSTITUTE ON AGING AND NATIONAL INSTITUTE OF MENTAL HEALTH

Conference

Notice is hereby given of the Conference on The Older Woman: Continuities and Discontinuities, cosponsored by the National Institute on Aging and the National Institute of Mental Health, September 14-16, 1978, in the National Institutes of Health, Bethesda, Md., building 31, C Wing, conference room 10.

This Conference will be open to the public on September 14 and 15 from 9 a.m. until 5 p.m., and on September 16 from 9 a.m. until 1 p.m. The purpose of the conference is to define the parameters for psychological and social research related to older women and to recommend areas for new research which might be supported by the two Institutes.

Dr. Betty H. Pickett, Associate Director, Extramural and Collaborative Research Program, National Institute on Aging, Building 31, room 5C21A, Bethesda, Md. 20014, phone 301-496-5534 or Ms. Joyce Lazar, Chief, Social Sciences Section, Behavioral Sciences Research Branch, NIMH, Parklawn Building, room 10-96, phone 301-443-3936 will provide additional information.

Dated: June 30, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-19389 Filed 7-13-78; 8:45 am]

[4110-08]

NATIONAL ADVISORY DENTAL RESEARCH COUNCIL

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Dental Research Council, National Institute of Dental Research, on September 21-22, 1978, in Building 31C, conference room 8, National Institutes of Health, Bethesda, Md. This meeting will be open to the public from 9 a.m. to adjournment on September 22 for general discussion and program presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting of the Council will be closed to the public on September 21, from 9 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications.

Mrs. Edith G. Sharpless, Committee Management Assistant, National Institute of Dental Research, National Institutes of Health, Building 31C, room 2C-36, Bethesda, Md. 20014, phone 301-496-6705, will furnish rosters of

committee members, a summary of the meeting, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 13-840 through 13-845, and 13-878, National Institutes of Health.)

Dated: June 30, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-19391 Filed 7-13-78; 8:45 am]

[4110-08]

NATIONAL ARTHRITIS, METABOLISM, AND DIGESTIVE DISEASES ADVISORY COUNCIL

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Arthritis, Metabolism, and Digestive Diseases Advisory Council and its subcommittees on August 23, 1978, in conference room 10, Building 31C, National Institutes of Health, Bethesda, Md. This meeting will be open to the public from 8:30 a.m. to 12:30 p.m. the first day to discuss administrative reports. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meetings of the Digestive Diseases Subcommittee; the Arthritis, Bone, and Skin Diseases Subcommittee; the Diabetes, Endocrine, and Metabolic Diseases Subcommittee; and the Kidney, Urologic and Blood Diseases Subcommittee, will be closed on August 23, from 1:30 p.m. to closing, Building 31, exact room assignments to be announced later, for the review, discussion and evaluation of individual grant applications. On August 24, the full Council meeting will be closed from 8:30 a.m. to closing, and on August 25, from 8:30 a.m. to adjournment, for the review, discussion and evaluation of research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications.

Further information concerning the Council meeting may be obtained from Dr. George T. Brooks, Executive Secretary, National Institute of Arthritis, Metabolism, and Digestive Diseases, Westwood Building, room 637, Bethesda, Md. 20014, 301-496-7277.

Messrs. James N. Fordham and Irving Shapiro, Office of Scientific and Technical Reports, NIAMDD, National Institutes of Health, Building 31, room 9A04, Bethesda, Md. 20014, 301-496-3583, will provide summaries of the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.846-850, National Institutes of Health.)

Dated: June 30, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-19390 Filed 7-13-78; 8:45 am]

[4110-08]

WORKSHOP ON GRADUATE EDUCATION IN PEDIATRIC HEMATOLOGY-ONCOLOGY

Meeting

Notice is hereby given of the Workshop on Graduate Education in Pediatric Hematology-Oncology sponsored by the National Cancer Institute September 26 and 27, 1978, at the Linden Hill Hotel, Terrace Room, 5400 Pookshill Road, Bethesda, Md.

This meeting will be open to the public on September 26 and 27 at 8:30 a.m. until adjournment, to discuss graduate education in pediatric hematology-oncology particularly as to the roles and functions of the pediatric hematology-oncologist, needs and resources for graduate education in pediatric hematology-oncology and the most appropriate content and format of such education programs. Attendance by the public will be limited to space available.

Dr. Margaret H. Edwards, Chief, Clinical Manpower Branch, Division of Cancer Research Resources and Centers, National Cancer Institute, Westwood Building, room 10A18, Bethesda, Md. 20014, 301-496-7761, will provide additional information.

Dated: July 10, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-19387 Filed 7-13-78; 8:45 am]

[4110-08]

RECOMBINANT DNA ADVISORY COMMITTEE

Meeting

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee at the National Institutes of Health, Building 31C, conference room 8, 9000 Rockville Pike, Bethesda, Md. 20014, on August 2-3, 1978, from 9 a.m. to 5 p.m.

The entire meeting will be open to the public for consideration of:

Proposed revisions of NIH Guidelines for Research Involving Recombinant DNA Molecules.
Organisms that exchange genetic information.
Biological containment and safer host-vector systems.
Review of protocols for required containment levels.
Requests for lowering of containment levels on the basis of characterization of clones.
Other matters requiring necessary action by the Committee.

Attendance by the public will be limited to space available. Dr. William J. Gartland, Executive Secretary, Recombinant DNA Advisory Committee, National Institutes of Health, Building 31, room 4A52, telephone 301-496-6051, will provide materials to be discussed at the meeting, rosters of committee members, and substantive program information. A summary of the meeting will be available at a later date.

Dated: July 10, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-19379 Filed 7-13-78; 8:45 am]

[4110-08]

SUBCOMMITTEES OF THE RECOMBINANT DNA ADVISORY COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Host-Plasmid Subcommittee and the Host-Phage Subcommittee of the Recombinant DNA Advisory Committee at the National Institutes of Health, Building 31C, Conference Room 8, 9000 Rockville Pike, Bethesda, Md. 20014, on August 1, 1978, from 9 a.m. to 5 p.m.

The entire meeting will be open to the public for discussion of the construction and testing of safer host-vector systems for recombinant DNA research, and other matters requiring consideration by the Subcommittees. Attendance by the public will be limited to space available.

Dr. William J. Gartland, Executive Secretary, Recombinant DNA Advisory Committee, National Institutes of Health, Building 31, Room 4A52, telephone 301-496-6051, will provide materials to be discussed at the meeting, rosters of committee members, and substantive program information. A summary of the meeting will be available at a later date.

Dated: July 10, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-19380 Filed 7-13-78; 8:45 am]

[4110-08]

BIOMETRY AND EPIDEMIOLOGY CONTRACT REVIEW COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, July 26-27, 1978, Landow Building, Room 4C18, 7910 Woodmont Avenue, Bethesda, Md. 20014. This

meeting will be open to the public on July 26, 1978, from 9 a.m. to 9:30 a.m. to discuss management practices. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on July 26, 1978 from 9:30 a.m. to 5 p.m., and on July 27, 1978, from 9 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals.

Mrs. Marjorie F. Early, Committee Management Officer, NCI, Building 31, Room 4B43, National Institutes of Health, Bethesda, Md. 20014, 301-496-5708, will furnish summaries of the meeting and rosters of committee members.

Dr. George Burton, Executive Secretary, Landow Building, Room 5C33, National Institutes of Health, Bethesda, Md. 20014, 301-496-5067, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.393, National Institutes of Health.)

Dated: June 30, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-19381 Filed 7-13-78; 8:45 am]

[4110-08]

MENTAL RETARDATION RESEARCH COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Mental Retardation Research Committee, National Institute of Child Health and Human Development, on July 31, August 1-2, 1978, in the Landow Building, Room C-418, 7910 Woodmont Avenue, Bethesda, Md.

This meeting will be open to the public on July 31 from 9 a.m. to 5 p.m., and on August 1 from 8:30 a.m. to 10:30 a.m. to discuss research needs and opportunities, and items relative to the Committee's activities including announcements by the Chief of the Mental Retardation and Developmental Disabilities Branch and the Acting Executive Secretary of the Committee.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on August 1 from 10:30 a.m. to adjournment on August 2 for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications.

Mrs. Marjorie Neff, Committee Management Officer, NICHD, Building 31, Room 2A-04, National Institutes of Health, Bethesda, Md., Area Code 301-496-1848, will provide a summary of the meeting and roster of committee members. Dr. Jane Showacre, Acting Executive Secretary, Mental Retardation Research Committee, NICHD, Landow Building, Room C-704, National Institutes of Health, Bethesda, Md., Area Code 301-496-1383, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.865, National Institutes of Health.)

Dated: June 30, 1978.

SUZANNE L. FREEMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-19382 Filed 7-13-78; 8:45 am]

[4110-08]

REVIEW OF CONTRACT PROPOSALS

Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of committees advisory to the National Cancer Institute.

These meetings will be open to the public to discuss administrative details or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual contract proposals, as indicated. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals.

Mrs. Majorie F. Early, Committee Management Officer, NCI, Buidling 31, room 4B43, National Institutes of Health, Bethesda, Md. 20014, 301-496-5708, will furnish summaries of the meetings and rosters of committee members, upon request. Other information pertaining to the meeting can be obtained from the Executive Secretary indicated. Meetings will be held at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Md. 20014, unless otherwise stated.

Name of committee: Diagnostic Research Advisory Group.
Dates: August 2, 1978; 8:30 a.m.-adjournment.
Place: Building 31C, Conference Room 10, National Institutes of Health.
Times: Open—August 2, 11 a.m.-adjournment.
Agenda/open portion: General business related to cancer diagnosis contract research program and review of current contracts.
Times: Closed—August 2, 8:30 a.m.-11 a.m.
Closure reason: To review research contract proposals.
Executive Secretary: Dr. R. Quentin Blackwell, Building 31, room 3A10, National Institutes of Health, phone 301-496-1591.
(Catalog of Federal Domestic Assistance No. 13.394, National Institutes of Health.)

Name of committee: Developmental Therapeutics Committee.
Dates: August 3, 1978; 9 a.m.-adjournment.
Place: Blair Building, room 110, 8300 Colesville Road, Silver Spring, Md. 20910.
Times: Open—August 3, 9 a.m.-9:30 a.m.
Times: Closed—August 3, 1978, 9:30 a.m.-adjournment.
Closure reason: To review research contract proposals.
Executive Secretary: Dr. J. A. R. Mead, Blair Building, room 5A03, National Institutes of Health, phone 301-427-7263.
(Catalog of Federal Domestic Assistance No. 13.395, National Institutes of Health.)

Dated: June 26, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-19383 Filed 7-13-78; 8:45 am]

[4210-01]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Interstate and Sales Registration

[Docket No. N-78-882]

DRIFTWOOD ESTATES, UNIT II

Hearing

In the matter of Driftwood Estates, Unit II, Leisure Land and Lakes, Inc., respondent OILSR No. 0-93286-20-51-(A) (Docket No. ED-78-3-IS).

Pursuant to 15 U.S.C. 1706(b) and 24 CFR 1710.45(a) and 1720.120.

Notice is hereby given that:

1. Driftwood Estates, Unit II, Leisure Land and Lakes, Inc., its officers and agents, hereinafter referred to as "respondent," being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. L. 90-448) (15 U.S.C. 1701, et seq.), received a notice of suspension dated June 8, 1978, which was sent to the developer pursuant to 15 U.S.C. 1706(b), 24 CFR 1710.45(a) and 1720.120, based on information obtained by the Office of Interstate Land Sales Registration showing that the statement of record and property report for Driftwood Estates, Louisville, Ky., contain untrue statements of material fact or omit to state material facts required to be

stated therein or necessary to make the statements therein not misleading.

2. The respondent filed an answer received June 29, 1978, in response to the order of suspension.

3. In said answer the respondent requested a hearing on the allegations contained in the order of suspension.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(b) and 24 CFR 1710.45(a) and 1720.120: *It is hereby ordered,* That a public hearing for the purpose of taking evidence on the questions set forth in the order of suspension will be held before Judge James W. Mast, in room 7143, HUD Building, at 10 a.m., 451 Seventh Street SW., Washington, D.C., on July 17, 1978.

5. The following time and procedure is applicable to such hearing: The parties are directed to file all affidavits and a list of all witnesses with the Hearing Clerk, HUD Building, Room 10278, Washington, D.C. 20410, on or before July 13, 1978. Copies of all documents filed should be served at the same time on all parties of record.

6. The respondent is hereby notified that failure to appear at the above scheduled hearing shall be deemed a default and the proceedings shall be determined against respondent, the allegations of which shall be deemed to be true, and an order suspending the statement of record, herein identified, shall be issued pursuant to 24 CFR § 1710.45(a).

This notice shall be served upon the respondent forthwith pursuant to 24 CFR § 1720.120.

By the Secretary.

Dated: July 5, 1978.

JAMES MAST,
Chief Administrative Law Judge.

[FR Doc. 78-19717 Filed 7-13-78; 12:13 pm]

[4310-84]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-6657-A thru AA-6657-G]

ALASKA NATIVE CLAIMS SELECTION

Notice of Publication

On May 3, 1961, the State filed general purposes grant selection application A-054381, pursuant to section 6(b) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339-340; 48 U.S.C. Ch. 2, Sec. 6(b) (1970)), for certain lands within Ts. 14 and 15 S., R. 56 W., Seward Meridian. On June 16, 1972, the application was amended to include all the lands in T. 14 S., R. 56 W., Seward Meridian, excluding patented lands.

On December 18, 1971, section 11(a) of the Alaska Native Claims Settlement Act (85 Stat. 688, 696; 43 U.S.C. 1601, 1610(a) (Supp. V, 1975)), withdrew the lands surrounding the Native village of Clarks Point including the lands in the subject State selection application, for Native selection. Saguyak, Inc. filed selection applications AA-6657-A (on March 22, 1974), and AA-6657—B through G (on October 3, 1974), as amended, under the provisions of section 12(a) of the Alaska Native Claims Settlement Act (85 Stat. 688, 701; 43 U.S.C. 1601, 1611(a) (Supp. V, 1975)) for lands located near the village, including lands within the subject State selection.

Section 12(a)(1) of the Alaska Native Claims Settlement Act provides that village selections shall be made from lands withdrawn by section 11(a). Section 11(a)(2) withdrew for possible selection by the Native corporation those lands that have been selected by, or tentatively approved to, but not yet patented to, the State under the Alaska Statehood Act. Section 12(a)(1) further provides that no village corporation may select more than 69,120 acres from lands withdrawn by section 11(a)(2).

The lands described below were properly selected by Saguyak, Inc. in village selection applications AA-6657-A and G; accordingly, the State selection application A-054381 is hereby rejected, as to the following described lands:

STATE SELECTION A-054381

SEWARD MERIDIAN, ALASKA (SURVEYED)

T. 14 S., R. 56 W.,
Those portions of Tract A more particularly described as (protracted):
Sec. 1 (fractional), excluding Native allotment AA-7340;
Secs. 2 to 5, inclusive, all;
Secs. 8, 9 and 10, all;
Sec. 11 (fractional), excluding Native allotment AA-8111;
Secs. 12 and 14 (fractional), all;
Secs. 15, 16 and 17, all;
Secs. 20 and 21, all;
Secs. 22, 23 and 27 (fractional), all;
Secs. 28 and 29, all;
Secs. 31, 32 and 33, all;
Sec. 34 (fractional), all.
Containing approximately 12,379 acres.

T. 15 S., R. 56 W.,
Tract A excluding Native allotment AA-6052 Parcel B.
Containing approximately 1,772 acres.

The total amount of State selected lands rejected to permit the conveyance hereafter given, totals approximately 14, 151 acres, which is less than 69,120 acres permitted by section 12(a)(1) of the Alaska Native Claims Settlement Act. Further action on the subject State selection application, as to those lands not rejected herein, will be taken at a later date.

As to the lands described below, the applications submitted by Saguyak, Incorporated, as amended, are properly filed, and meet the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to section 12(a), aggregating approximately 77,267 acres, is considered proper for acquisition by Saguyak, Incorporated and is hereby approved for conveyance pursuant to section 14(a) of the Alaska Native Claims Settlement Act:

SEWARD MERIDIAN, ALASKA (SURVEYED)

T. 14 S., R. 56 W.
Those portions of Tract A more particularly described as (protracted):
Sec. 1 (fractional), excluding Native allotment AA-7340;
Secs. 2 to 5, inclusive, all;
Secs. 8, 9 and 10, all;
Sec. 11 (fractional), excluding Native allotment AA-8111;
Secs. 12 and 14 (fractional), all;
Secs. 15, 16 and 17, all;
Secs. 20 and 21, all;
Secs. 22, 23 and 27 (fractional), all;
Secs. 28 and 29, all;
Secs. 31, 32 and 33, all;
Sec. 34 (fractional), all.
Containing approximately 12, 379 acres.

T. 15 S., R. 56 W.
Tract A, excluding Native allotment AA-6052, Parcel B.
Containing approximately 1,772 acres.

SEWARD MERIDIAN, ALASKA (UNSURVEYED)

T. 14 S., R. 54 W.
Secs. 1 to 5, inclusive, all;
Sec. 6, excluding U.S. Survey 526;
Secs. 7 to 12, inclusive, all;
Secs. 16 to 21, inclusive, all;
Secs. 28 to 33, inclusive, all.
Containing approximately 15,196 acres.

T. 15 S., R. 54 W.
Secs. 4 to 9, inclusive, all;
Secs. 16 to 20, inclusive, all;
Secs. 29 to 32, inclusive, all.
Containing approximately 9,514 acres.

T. 14 S., R. 55 W.
Secs. 1 and 2, all;
Secs. 3, 4 and 5 (fractional), all;
Sec. 9 (fractional), all;
Sec. 10 (fractional), excluding U.S. Survey 68 and U.S. Survey 868;
Sec. 11, all;
Sec. 12, excluding U.S. Survey 131;
Sec. 13, all;
Sec. 14 (fractional), excluding U.S. Survey 130 and U.S. Survey 165;
Sec. 15 (fractional), excluding U.S. Survey 68 and U.S. Survey 868;
Sec. 16 (fractional), excluding U.S. Survey 868;
Sec. 17 (fractional), excluding U.S. Survey 164 and U.S. Survey 166;
Sec. 20 (fractional), excluding U.S. Survey 166, U.S. Survey 309, U.S. Survey 513, U.S. Survey 514, and U.S. Survey 866;
Secs. 21 to 28, inclusive, all;
Sec. 29 (fractional), excluding Native allotment AA—7394;
Sec. 32 (fractional), all;
Secs. 33 to 36, inclusive, all.
Containing approximately 14,748 acres.

T. 15 S., R. 55 W.
Secs. 1 to 4, inclusive, all;

Secs. 5 and 8 (fractional), all;
Secs. 9 to 14, inclusive, all;
Sec. 15, excluding the Clark Slough;
Sec. 16, excluding U.S. Survey 2682 and the Clark Slough;
Sec. 17 (fractional), all;
Sec. 19 (fractional), excluding U.S. Survey 521;
Sec. 20 (fractional), excluding U.S. Survey 546 and Native allotment AA-7794 Parcels C and D;
Sec. 21, excluding U.S. Survey 2682 and the Clark Slough;
Sec. 22, excluding the Clark Slough;
Secs. 23, 24 and 25, all;
Secs. 26 and 27, excluding the Clark Slough;
Sec. 28, all;
Sec. 29, excluding U.S. Survey 546, U.S. Survey 547 and Native allotment AA-6461;
Sec. 30 (fractional), excluding U.S. Survey 169, U.S. Survey 545, Native allotments AA-6245 Parcel B and AA-6461;
Sec. 31, excluding U.S. Survey 545, Native allotments AA-6288, AA-6245 Parcel B and AA-6461;
Sec. 32, excluding Native allotment AA-6461;
Secs. 33 and 34, all;
Sec. 35, excluding the Clark Slough;
Sec. 36, all.
Containing approximately 19,330 acres.

T. 15 S., R. 56 W.
Sec. 25 (fractional), excluding U.S. Survey 67, U.S. Survey 171, U.S. Survey 2837 and U.S. Survey 4492;
Sec. 36 (fractional), excluding U.S. Survey 168, U.S. Survey 505, U.S. Survey 4992 and Native allotment A-057207 Parcel B.
Containing approximately 321 acres.

T. 14 S., R. 57 W.
Sec. 34, all;
Sec. 35, excluding the Snake River;
Sec. 36, all.
Containing approximately 1,725 acres.

T. 15 S., R. 57 W.
Sec. 1, all;
Sec. 12, all;
Secs. 13 and 14 (fractional), all;
Sec. 15 (fractional), excluding Native allotment AA-7469.
Containing approximately 2,282 acres.

Total aggregated acreage approximately 77,267 acres.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(f) (Supp. V, 1975)); and

2. Pursuant to section 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616(b) (Supp. V, 1975)), the following public easements, referenced by easement identification number (EIN) on the easement maps in case file AA-6657-EE, are reserved to the United States and subject to further regulation thereby:

(*a*) (EIN 3 C5) A continuous linear easement twenty-five (25) feet in width upland of and parallel to the mean high tide line in order to provide access to and along the marine coastline and use of such shore for purposes such as beaching of watercraft or aircraft, travel along the shore, recreation, and other similar uses. Deviations from the waterline are permitted when specific conditions so require, e.g., impassable topography or waterfront obstruction. This easement is subject to the right of the owner of the servient estate to build upon such easement a facility for public or private purposes, such right to be exercised reasonably and without undue or unnecessary interference with or obstruction of the easement. When access along the marine coastline easement is to be obstructed, the owner of the servient estate will be obligated to convey to the United States an acceptable alternate access route, at no cost to the United States, prior to the creation of such obstruction.

(*b*) (EIN 5 C5) An easement for an existing access trail twenty-five (25) feet in width from Clarks Point northerly to Dillingham and public lands. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

(*c*) (EIN 6 C5) An easement for an existing access trail twenty-five (25) feet in width from trail EIN 5 C5 in section 30, T. 15 S., R. 55 W., Seward Meridian, easterly to Portage and public lands. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

(*d*) (EIN 7 C5) An easement for an existing access trail twenty-five (25) feet in width from trail EIN 5 C5 in section 30, T. 15 S., R. 55 W., Seward Meridian, southeasterly to public lands. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

(*e*) (EIN 11 C4) The right of the United States to enter upon the lands hereinabove granted for cadastral, geodetic, or other survey purposes is reserved, together with the right to do all things necessary in connection therewith.

(*f*) (EIN 13 E) An easement for an existing access trail twenty-five (25) feet in width from Clarks Point southerly to Ekuk and public lands. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

(*g*) (EIN 14 D1) An easement for a proposed access trail twenty-five (25) feet in width from trail EIN 5 C5 in section 17, T. 14 S., R. 54 W., Seward Meridian, easterly to public lands in section 14, T. 14 S., R. 54 W., Seward Meridian. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

These reservations have not been conformed to the Departmental easement policy announced March 3, 1978. Conformance is contingent upon resolution of the litigation *Calista, et al.* v. *Andrus* and implementation of the Secretary's new easement policy.

The grant of lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under section 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, sec. 6(g) (1970))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him;

3. Those rights for water pipeline purposes as have been granted to Alaska Packers Association, Inc., its successors or assigns, by right-of-way A-011530, located in section 30, T. 15 S., R. 55 W., Seward Meridian and sections 25 and 36, T. 15 S., R. 56 W., Seward Meridian, under the act of February 15, 1901 (31 Stat. 790; 43 U.S.C. 959);

4. Requirements of section 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 703; 43 U.S.C. 1601, 1613(c) (Supp. V, 1975)), that the grantee hereunder convey those portions, if any, of lands hereinabove granted, as are prescribed in said section; and

5. The terms and conditions of the agreement dated January 18, 1977, between the Secretary of the Interior, Bristol Bay Native Corp., Saguyak, Inc. and other Bristol Bay village corporations. A copy of the agreement shall be attached to and become a part of the conveyance document and shall be recorded therewith. A copy of the agreement is located in the Bureau of Land Management easement case file for Saguyak Inc., serialized AA-6657-EE. Any person wishing to examine this agreement may do so at the Bureau of Land Management, Alaska State Office, 555 Cordova Street, Anchorage, Alaska 99501.

Saguyak, Inc. is entitled to conveyance of 92,160 acres of land selected pursuant to section 12(a) of the Alaska Native Claims Settlement Act. To date, approximately 77,267 acres of this entitlement have been approved for conveyance; the remaining entitlement of approximately 14,893 acres will be conveyed at a later date.

Pursuant to section 14(f) of the Alaska Native Claims Settlement Act, conveyance to the subsurface estate of the lands described above shall be granted to Bristol Bay Native Corp. when conveyance is granted to Saguyak, Inc., for the surface estate and

shall be subject to the same conditions as the surface conveyance.

Only the following inland water body, within the lands described, is considered to be navigable: Snake River.

The Clark Slough, Kanulak Slough, Rolph Slough and Nushagak River are considered to be subject to tidal influence throughout the selected area.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the FEDERAL REGISTER and once a week, for four (4) consecutive weeks, in the Anchorage Times. Any party claiming a property interest in lands affected by this decision may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510 with a copy served upon both the Bureau of Land Management, Alaska State Office, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510 and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501, also:

1. Any party receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate, and any parties who failed or refused to sign the return receipt shall have until August 14, 1978 to file an appeal.

3. Any party know or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

4. If Saguyak, Inc. or Bristol Bay Native Corp. objects to any easement which is identified herein for reservation in the conveyance, which is subject to the discretion of the State Director and not reserved pursuant to an express Secretarial directive, a petition for reconsideration must be filed within 30 days from receipt of service with the State Director, Bureau of Land Management, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99501. A copy of the petition should be served upon the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501. If a petition for reconsideration is not filed, it will be deemed that the right to contest any such easement has been waived.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeal. (See enclosed ASO Form 2650-4). Further information on the manner of, and requirements for, filing an appeal may be obtained from the Bureau of Land Management, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510.

If an appeal is taken, the adverse parties to be served are: State of Alaska, Division of Lands, 323 East Fourth Avenue, Anchorage, Alaska 99501; Saguyak, Inc., Clarks Point, Alaska 99569; Bristol Bay Native Corp., P.O. Box 220, Anchorage, Alaska 99501.

SUE A. WOLF,
Chief, Selections and Leasable Minerals Operations.

[FR Doc. 78-19455 Filed 7-13-78; 8:45 am]

[4310-84]

[AA-2695; AA-16806]

ALASKA

Termination of Segregative Effect Lands Made Available for State Selection Lands Opened Subject to Provisions of Section 24 of the Federal Power Act

Pursuant to section 24 of the Federal Power Act of June 10, 1920 (16 U.S.C. 818) and section 1.5(c) of Bureau Order 701 of July 23, 1964, it is ordered as follows:

1. Pursuant to the order of the Federal Energy Regulatory Commission, issued June 5, 1978, the following described lands are hereby relieved of the segregative effect of the withdrawal created by the application for a license for construction of the Green Lake Power Project (Project No. 2818) on the Vodopad River near Sitka, Alaska:

All United States lands, in the following described protracted sections lying within the boundary of the transmission line and access roads of Project No. 2818, as shown on map exhibits K-1 and K-2 filed in the office of the Federal Power Commission, on September 19, 1977:

COPPER RIVER MERIDIAN, ALASKA
(UNSURVEYED)

T. 55 S., R. 64 E.
Sec. 34.
T. 56 S., R. 64 E.
Sec. 2, 3, 11, 12, 13, and 24.
T. 56 S., R. 65 E.
Sec. 18, 19, 29, and 30.
Containing approximately 214 acres.

The above-described lands are within Tongass National Forest and are hereby opened to such dispositions as can be made of national forest lands, provided that pursuant to section 6(g) of the act of July 7, 1958 (72 Stat. 341), for a period of 90 days from the date of this order the State of Alaska shall have a preference right to make selections under section 6(a) of said act (72 Stat. 340).

2. Pursuant to the June 5, 1978 determination of the Federal Energy Regulatory Commission, and subject to the proviso contained therein that the State transfer to the city and borough of Sitka all reserved lands required for the Green Lake Project, the following described lands are hereby opened, subject to the provisions of section 24 of the Federal Power Act (supra), to selections under section 6(a) of the act of July 7, 1958 (supra):

POWER PROJECT 2818

All United States lands, in the following described protracted sections, lying within the boundary of the reservoir, dam and powerhouse of Project No. 2818 as shown on map exhibits K-3 and K-4, filed in the office of the Federal Power Commission on September 19, 1977:

COPPER RIVER MERIDIAN, ALASKA
(UNSURVEYED)

T. 56 S., R. 65 E.
Sec. 20, 21, 26, 27, 28, 29, 33, 34, 35, and 36.
T. 57 S., R. 66 E.
Sec. 4.

CONTAINING APPROXIMATELY 1,455 ACRES.

POWER SITE CLASSIFICATION NO. 459

All lands adjacent to Vodopad River and Green Lake upstream from the outlet at Silver Bay which lie below an altitude of 400 feet above sea level. The Port Alexander D-4 quadrangle map shows that the lands will lie wholly or in part within the following described protracted sections:

COPPER RIVER MERIDIAN, ALASKA
(UNSURVEYED)

T. 56 S., R. 65 E.
Sec. 20, 21, 26, 27, 28, 29, 33, 34, 35, and 36.
Containing approximately 1,095 acres.

CLAIR M. WHITLOCK,
Acting State Director.

[FR Doc. 78-19397 Filed 7-13-78; 8:45 am]

[4310-84]

FOSSIL FALLS, NEAR LITTLE LAKE, CALIF.

Notice of Road Closure

Notice is hereby given that two unimproved roads on public lands, at Fossil Falls, near Little Lake, Calif., will be closed with barriers by the Bureau of Land Management. The two closures are situated in Inyo County, at the following location:

USGS LITTLE LAKE, CALIF., 15 QUADRANGLE

T. 22 S., R. 38 E.
Sec. 32, SW¼ of SW¼

The two roads diverge off the south end of Red Hill Playa near Fossil Falls; one road travels to the top of Fossil Falls proper and the other goes to the head of Little Fossil Falls.

Because the Fossil Falls area contains a high density of archaeological sites believed to be 15,000 years of age or older, the area has a unique and significant cultural value. Irreparable damage to these archaeological sites is occurring from vehicular impacts and illegal collection of artifacts.

The purpose of the two closures is to protect the cultural values associated with Fossil Falls and the ancient

Owens River drainage. This closure is part of the Fossil Falls Interpretation and Protection Plan.

Installation of the barriers is consistent with the policies stated in the National Environmental Protection Act and Executive Order 11593.

WILLIAM R. HAIGHT,
Acting District Manager.

[FR Doc. 78-19398 Filed 7-13-78; 8:45 am]

[4310-84]

PROPOSED OFF-ROAD VEHICLE DESIGNATIONS

Availability of Draft Environmental Assessment Record

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Las Cruces, N.M. district office of the Bureau of Land Mangement has prepared implementation of Executive Order 11644 as amended which pertains to the use of off-road vehicles on public lands.

The draft Environmental Assessment Record deals with the proposed designation of off-road vehicle areas in the Organ Mountain Planning Unit (consisting of some 135,000 acres), Las Cruces District, N.M. The designations are being proposed in consideration of the importance of protecting environmental values and other recreational and resource-oriented activities, and will insure proper and compatible use of off-road vehicles on public lands.

Public reading copies of the draft Environmental Assessment Record will be available for review at the Las Cruces District Office, Bureau of Land Management, 1705 North Valley Drive, Las Cruces, N. Mex. Telephone 505-523-5571. Interested persons desiring to express their views should submit comments, including their name and address, within 45 days to: District Manager, Bureau of Land Management, Las Cruces District Office, P.O. Box 1420, Las Cruces, N. Mex. 88001.

BILLY M. BRADY,
Acting State Director.

[FR Doc. 78-19399 Filed 7-13-78; 8:45 am]

[4310-84]

[NM 33750, 33751, 33752, 33753, 33754, 33755, 33756, 33757, 33758]

NEW MEXICO

Notice of Applications

JULY 7, 1978.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for nine 4½-inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, N.M.

T. 28 N., R. 7 W.,
Sec. 7, lot 1 and SE¼SE¼;
T. 29 N., R. 8 W.,
Sec. 20, SW¼SW¼;
Sec. 29, N½NW¼ and SE¼ NW¼;
Sec. 35, N½SW¼, SE¼SW¼ and W½SE¼.
T. 31 N., R. 9 W.,
Sec. 7, lots 15, 16, 17, 18 and 19.
T. 31 N., R. 10 W.,
Sec. 12, lots 9, 15 and 16;
Sec. 14, lots 9, 11, 12 and NE¼SE¼.

These pipelines will convey natural gas across 2.160 miles of public lands in Rio Arriba and San Juan Counties, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico 87107.

RAUL E. MARTINEZ,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-19400 Filed 7-13-78; 8:45 am]

[4310-84]

[NM 33749]

NEW MEXICO

Notice of Application

JULY 7, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Co. has applied for one 4½ inch natural gas pipeline right-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 26 S., R. 30 E.,
Sec. 25, S½S½.
T. 26 S., R. 31 E.,
Sec. 30, lots 3 and 4.

This pipeline will convey natural gas across 1.344 miles of public lands in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

RUAL E. MARTINEZ,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-19401 Filed 7-13-78; 8:45 am]

[4310-09]

AGATE AND EMIGRANT RESERVIORS ROGUE RIVER PROJECT, OREGON

Off-Road Vehicle Use

Public Notice of Off-Road Vehicle Use on Designated Roads, Trails, and Open Areas at Agate and Emigrant Reservoirs, Rogue River Project, Oregon.

In accordance with the authorities and requirements of Executive Orders Nos. 11644 and 11989 and the provisions of Title 43, Part 420, Code of Federal Regulations, off-road vehicle (ORV) use is proposed on designated roads only at Agate Reservoir and on three adjacent areas and the adjacent lakebed at Emigrant Reservoir, while remaining Emigrant Reservoir lands will be open on designated roads only.

Copies of the evaluation leading to the decision to permit limited use of ORV's at these reservoirs and maps showing the areas open and closed to ORV use on these reservoirs may be examined at the following addresses:

Bureau of Reclamation, Pacific Northwest Regional Office, 550 West Fort Street, Boise, Idaho 83724.
Jackson County, Parks and Recreation Advisory Board, Courthouse, Medford, Oreg. 97501.

Effective Date: August 14, 1978.

For Further Information Contact: Mr. Mike Misner, Chief, Recreation Branch, Division of Water, Power and Lands, Bureau of Reclamation, Pacific Northwest Region, Boise, ID 83724, 208-384-1177

Dated: June 29, 1978.

CLIFFORD I. BARRETT,
Acting Commissioner of Reclamation.

[FR Doc. 78-19408 Filed 7-13-78; 8:45 am]

[4310-09]

Bureau of Reclamation

INTERAGENCY TASK FORCE ON IRRIGATION EFFICIENCIES

Availability of Draft Report of Irrigation Water Use and Management Study

Notice is hereby given that the Technical Work Group For the Interagency Task Force on Irrigation Efficiencies has issued a draft report entitled "Irrigation Water Use and Management."

A limited number of single copies are available to interested persons and

organizations upon request to Sheldon G. Boone, Chairman, Technical Work Group, Cooperative Irrigation Study, P.O. Box 25007, Denver, Colo. 80225.

The draft report contains the results of a study aimed at increasing the conservation of irrigation water in the United States. It characterizes irrigated agriculture in the United States and describes related water laws, institutions, and ongoing programs. The report identifies irrigation water use and management problems, examines measures for improving irrigation efficiencies and assesses their potential impacts, and presents recommendations for consideration by Federal and State government agencies and local organizations.

The Technical Work Group which prepared the draft report consists of experts in irrigation and other disciplines concerned with the use and management of water and related resources. Work group members represent the Department of the Interior, the Department of Agriuclture, the Environmental Protection Agency, and State governments. The study is directed by the Interagency Task Force on Irrigation Efficiencies which consists of representatives of the participating Federal agencies. The Department of the Interior is the lead agency for the task force effort.

Copies of the draft report and requests for comments and recommendations have been sent to the various Federal and State agencies that contributed to the study. Copies of the report and invitations to comment were also sent to persons and organizations that contributed or expressed interest through the Technical Work Group's public involvement program.

Comments and recommendations concerning the draft report should be addressed to Mr. Boone at the address given above. Comments must be received on or before August 31, 1978, to be considered when the final report is prepared.

Dated: July 11, 1978.

J. W. HAAS,
Acting Chairman, Interagency Task Force on Irrigation Efficiencies.

[FR Doc. 78-19457 Filed 7-13-78; 8:45 am]

[4310-09]

POTHOLES RESERVOIR, WASHINGTON

Off-Road Vehicle Use

Public notice of Off-Road Vehicle Use on designated roads, trails, and open areas at Potholes Reservoir, Columbia Basin project, Wash.

In accordance with the authority and requirements of Executive Orders 11644 and 11989 and the provisions of Title 43, Part 420, Code of Federal Regulations, off-road vehicle (ORV) use is proposed on designated roads, trails, and open areas at Pothole Reservoir. The evaluation leading to the decision to permit ORV usage and a map (Drawing No. 222-116-41248) showing roads and areas where ORV use is permitted are available for public inspection at the following locations:

Bureau of Reclamation, Pacific Northwest Regional Office, 550 West Fort Street, Boise, ID 83724.

Bureau of Reclamation, Columbia Basin Project Office, Division Avenue and C Streets NW., Ephrata, WA 98823.

Grant County Planning Department, Grant County Courthouse, Ephrata, WA 98823.

Washington Department of Game, 1540 Aldec NW., Ephrata, WA 98823.

Washington State Parks and Recreation Commission, 2201 North Duncan Drive, Wenatchee, WA 98801.

Effective Date: August 14, 1978.

For Further Information Contact:

Mr. Mike Misner, Chief, Recreation Branch, Division of Water, Power, and Lands, Pacific Northwest Region, Boise, ID 83724, Bureau of Reclamation, 208-384-1177.

Dated: June 29, 1978.

CLIFFORD I. BARRETT,
Acting Commissioner of Reclamation.

[FR Doc. 78-19409 Filed 7-13-78; 8:45 am]

[4310-70]

National Park Service

[Order No. 4]

ADMINISTRATIVE OFFICER, ET AL, CARLSBAD CAVERNS AND GUADALUPE MOUNTAINS NATIONAL PARKS

Delegation of Authority

SECTION 1. *Administrative Officer.* The Administrative Officer may issue contracts not in excess of $50,000 for supplies, equipment or services in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds.

SEC. 2. *Procurement Agent.* The Procurement Agent may issue contracts not in excess of $25,000 for supplies, equipment or services in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds.

SEC. 3. *Supply Clerk.* The Supply Clerk may issue purchase orders not in excess of $2,000 for equipment, supplies, and services in conformity with applicable regulations and statutory authority and subject to the availability of appropriated funds.

SEC. 4. *Revocation.* This order supersedes Order No. 3, Carlsbad Caverns National Park, dated: May 25, 1972, and published July 25, 1972 (FR vol. 37, No. 143, July 25, 1972).

(National Park Service Order No. 77, 38 FR 7478, as amended, Southwest Region Order No. 5, 37 FR 7722 as amended.)

BOBBY L. CRISMAN,
Acting Superintendent, Carlsbad Caverns and Guadalupe Mountains National Parks.

[FR Doc. 78-19418 Filed 7-13-78; 8:45 am]

[4310-70]

[Order No. 4]

HOT SPRINGS NATIONAL PARK

Delegation of Authority Regarding Purchasing Authority

SECTION. 1 *Administrative Officer.* The Administrative Officer may execute and approve contracts not in excess of $15,000 for supplies, equipment, or services in conformity with applicable regulations and stautory authority and subject to the availability of appropriated funds.

SECTION. 2 *Supply Clerk (Typing).* The Supply Clerk may issue purchase orders not in excess of $2,500 for supplies, equipment, or services in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds.

SECTION. 3 *Administrative Clerk.* The Administrative Clerk may issue purchase orders not in excess of $500 for supplies, equipment, or services in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds.

SECTION. 4 *Supervisory Park Rangers.* Supervisory Park Rangers may issue purchase orders not in excess of $500 for supplies or equipment, in accordance with applicable regulations and statutory authority and subject to availability of appropriated funds.

SECTION. 5 *Facilities Manager.* The Facilities Manager may issue purchase orders not in excess of $500 for supplies, equipment, or services in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds.

SECTION. 6 *Revocation.* This Order supersedes Order No. 3, Hot Springs National Park, dated October 26, 1973, and published December 6, 1973. (38 FR)

(National Park Service Order No. 77, 38 FR 7478 as amended), Southwest Region Order No. 5, 37 FR 7722 as amended.

Dated: April 24, 1978.

RICHARD H. MAEDER,
Superintendent, Hot Springs National Park.

[FR Doc. 78-19417 Filed 7-13-78; 8:45 am]

[4310-70]

INDIANA DUNES NATIONAL LAKESHORE

Correction of Boundary Description

There appeared in the FEDERAL REGISTER of January 16, 1978, on Pages 2240-2243, a Notice of Establishment of Indiana Dunes National Lakeshore containing a description of the boundaries.

Now, therefore, in order to correct certain minor errors, the following corrections are made for the Boundary Descriptions:

Parcel 1, page 2241, third line
DELETE: kV
INSERT: kv
Parcel 1, page 2241, beginning with line 21
SEE: "thence, north along said west line to the south line of the northwest quarter of the southwest quarter of the southwest quarter of Section 21,"
SHOULD READ: "thence, north along said west line to the south line of the northwest quarter of the southwest quarter of said Section 22; thence west to the southwest corner of the northeast quarter of the southwest quarter of Section 21, Township 37 North, Range 6 West, Second Principal Meridian, Porter County, Indiana; thence north along the west line
Parcel 1, page 2241, line 39
DELETE: "sourtheasterly"
INSERT: "southeasterly"
Parcel 1, page 2241, line 45
SEE: "Lake Shore Drive"
SHOULD READ: "Lake Shore Drive, a.k.a. Beverly Drive"
Parcel 1, page 2241, line 57
DELETE: "sourtwesterly"
INSERT: "southwesterly"
Parcel 2, page 2241, 6th line from end of 3rd column
DELETE: "Indian Spring Subdivision"
INSERT: "Indian Springs Subdivision"
Parcel 2, page 2242, 13th line from end of Parcel 2 description
DELETE: "southwest"
INSERT: "southeast"
Parcel 2, page 2242, 12th line from end of Parcel 2 description
DELETE: "thence North along said east line 1,815 feet;"
INSERT: "thence north along the east of Section 28, 1,815 feet;"
Parcel 3, page 2242, 2nd column on page
DELETE: lines 39 through 48
INSERT: "thence west along said Township line to the northeast corner of the northwest quarter of the northeast quarter of Section 3, Township 36 North, Range 7 West, 2nd Principal Meridian; thence southwesterly, severing that parcel of land conveyed by the Lake Shore Sand Company to The Real Estate and Improvement Company of Baltimore City be deed recorded December 2, 1915 as document number 13962 of the Porter County, Indiana records to the northeast corner of an exception to said parcel; thence westerly along the north line of said exception to the west line of said Section 3; thence northerly along said west line"
Parcel 3, page 2243, line 52.
DELETE: "of the east half of said Section 35;"
INSERT: "of the east half of the east half of said Section 35;"

Dated: May 17, 1978.

MERRILL D. BEAL,
Regional Director,
Midwest Region.

[FR Doc. 78-19413 Filed 7-13-78; 8:45 am]

[4310-70]

[Order No. 1]

MOUND CITY GROUP NATIONAL MONUMENT, OHIO

Delegation of Authority regarding Purchasing Authority

SECTION 1. *Administrative Technician.* The Administrative Technician may issue Purchase Orders not in excess of $500 for supplies, equipment or services in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds.

(National Park Service Order No. 77, 38 FR 7478 published March 22, 1973, as amended.)

Dated: April 12, 1978

FRED J. FAGERGREN,
Superintendent, Mound City
Group National Monument.

[FR Doc. 78-19416 Filed 7-13-78; 8:45 am]

[4310-70]

VOYAGEURS NATIONAL PARK, MINNESOTA

Correction of Boundary Descriptions

There appeared in the FEDERAL REGISTER of April 8, 1975, at Pages 15921-15922, a Notice of Establishment of Voyageurs National Park containing a description of the boundaries. These boundary determinations were made by the Secretary of the Interior under authority vested in him by the Act of January 8, 1971 (84 Stat. 1971), and such boundaries encompass areas of lands and waters generally identical to that described in Section 102 of such Act.

Now, therefore, in order to correct certain minor errors, the following corrections are made for the Voyageurs National Park:

ST. LOUIS COUNTY, 4TH PRINCIPAL MERIDIAN

T. 68 N., R. 17 W.
DELETE: Lines 1 and 2.
INSERT: "All of Sections 1 through 12 inclusive and Sections 14 through 29 inclusive;
Section 30, Government Lots 1, 2, 3 and 4, E½ and E½W½;
Section 31, Government Lots 1, 2, 3 and 7, NE¼ and the NE¼SE¼;
All of Sections 32, 33, 34 and 35;"
The remainder is correct.
T. 68 N., 18 W.
DELETE: "All of Sec. 1 through 13 inclusive;"
INSERT: "All of Sec. 1 through 12 inclusive;"
Sec. 13, Government Lots 1, 2 and 3, W½NE¼, NW¼, N½SW¼, SE¼SW¼, and the SE¼;"
The remainder is correct.
T. 69 N., R. 19 W.,
SEE: "Sec. 33, E½ and the NW¼;"
SHOULD READ: "Sec. 33, E½, NW¼ and the E½E½SW¼;"

KOOCHICHING COUNTY, 4TH PRINCIPAL MERIDIAN

T. 70 N., R. 22 W.,
SEE: "Sec. 10,"
AFTER: "* * * Government Lot 3,* * *"
INSERT: "and all that body of water forming an unnamed bay separating said Government Lots 2 and 3 and extending into Government Lot 1;"
See "* * * Government Lot 5 and the SE¼, NW¼ . . ."
SHOULD READ: "* * * Government Lot 5 and the SE¼NE¼, except all that part of said Gov't Lot 5 being now separated by a distinct water channel and forming an island lying to the South of said Gov't Lot 5 located on the Kabetogama Peninsula.
DELETE: "All of Sec. 11, 12, 13, 24 and 25;"
INSERT: "Sec. 11, All, except that part of Government Lots 1, 2 and 3 of said Section 11 being now separated by distinct channels of water and forming small islands lying to the South of said lots located on the Kabetogama Peninsula:
All of Sections 12, 13, 24 and 25;"
SEE: "Sec. 34, NE¼, SE¼, NW¼ and * * *"
SHOULD READ: "Sec. 34, NE¼, SE¼NW¼ and * * *"
The remainder is correct.

Dated: May 17, 1978.

MERRILL D. BEAL,
Regional Director,
Midwest Region.

[FR Doc. 78-19414 Filed 7-13-78; 8:45 am]

[4310-70]

[Order No. 4]

YOUNG ADULT CONSERVATION CORP. (ARIZONA CLUSTER CAMP 2193)

Delegation of Authority

Delegation of authority regarding execution of contracts for supplies, equipment or services.

SECTION 1. The Camp Director may execute and approve contracts not in excess of $2,000 for supplies, equipment or services in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds. The authorities stated herein are applicable to the YACC Arizona Cluster Camp in its entire jurisdiction.

SEC. 2. The Administrative Officer may execute and approve contracts not in excess of $2,000 for supplies, equipment or services in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds. The authorities stated herein are applicable to the YACC Arizona Cluster Camp in its entire jurisdiction.

SEC. 3. The Work Coordinator may execute and approve contracts not in excess of $300 for supplies, equipment or services in conformity with applica-

ble regulations and statutory authority and subject to availability of appropriated funds. The authorities stated herein are applicable to the YACC Arizona Cluster Camp in its entire jurisdiction.

SEC. 4. *Redelegation.* The authority delegated in Sections 1, 2, and 3 may not be redelegated.

(National Park Service Order No. 77 (38 FR 7478), as amended; Western Region Order No. 7 (37 FR 6326), as amended, dated March 28, 1972.)

Dated: April 20, 1978.

JOHN H. CLAY,
General Superintendent, Southern Arizona Group and Project Manager, YACC Camp 2193 (Arizona Cluster).

APRIL 26, 1978.

JOHN H. DAVIS,
Acting Regional Director, Western Region.

APRIL 28, 1978.

[FR Doc. 78-19415 Filed 7-13-78; 8:45 am]

[7020-02]

INTERNATIONAL TRADE COMMISSION

[AA1921-Inq.-13]

METHYL ALCOHOL FROM CANADA

Commission Determines "A Reasonable Indication of Injury"

JULY 10, 1978.

On June 9, 1978, the U.S. International Trade Commission received advice from the Department of the Treasury that, in accordance with section 201(c)(1) of the Antidumping Act of 1921, as amended, an antidumping investigation was being initiated with respect to methyl alcohol from Canada, and that, pursuant to section 201(c)(2) of the act, information developed during Treasury's preliminary investigation led to the conclusion that there is substantial doubt that an industry in the United States is being or is likely to be injured by reason of the importation of such methyl alcohol into the United States from Canada. Accordingly, the Commission, on June 16, 1978, instituted inquiry AA1921-Inq.-13 under section 201(c)(2) of the act to determine whether there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

A public hearing was held on June 26, 1978, in Washington, D.C. Public notice of both the institution of the inquiry and of the hearing was duly given by posting copies of the notice at the Secretary's Office in the Commission in Washington, D.C., and at the Commission's office in New York City, and by publishing the original notice in the FEDERAL REGISTER on June 22, 1978 (43 FR 26800).

The Treasury instituted its investigation after receiving a properly filed complaint on May 2, 1978, from the E. I. du Pont de Nemours & Co., Inc., Wilmington, Del. The Treasury's notice of its antidumping proceeding was published in the FEDERAL REGISTER of June 14, 1978 (43 FR 25758).

On the basis of information developed during the course of this inquiry the Commission determines that there is a reasonable indication that an industry in the United States is being or is likely to be injured, by reason of the importation of methyl alcohol into the United States from Canada allegedly sold at less than fair value as indicated by the Department of the Treasury.[1]

VIEWS OF CHAIRMAN JOSEPH O. PARKER AND COMMISSIONERS GEORGE M. MOORE AND CATHERINE BEDELL

On June 9, 1978, the United States International Trade Commission received advice from the Department of the Treasury that, during the course of a preliminary investigation with respect to methyl alcohol from Canada, Treasury had concluded from the information available to it "that there is substantial doubt that an industry in the United States is being or is likely to be injured by reason of the importation of this merchandise into the United States." On June 16, 1978, the Commission instituted inquiry No. AA1921-Inq.-13 under section 201(c)(2) of the Antidumping Act, 1921, as amended, to determine whether there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Determination

On the basis of information developed during the course of this inquiry, we do not determine that there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established,[2] by reason of the importation of methyl alcohol into the United States from Canada allegedly sold at less than fair value (LTFV) as indicated by the Department of the Treasury.

Discussion

Domestic production of methyl alcohol decreased from 1973 to 1975 and then increased in 1976 and 1977. In 1977, however, domestic production was lower than in 1973 and 1974. In January through April 1978, production fell 7 percent below that of the corresponding period of the previous year. Throughout this period, domestic producers' shipments were about equally divided between captive consumption and open-market consumption. Two firms have ceased production since 1975, and one has indicated curtailment of plans to expand capacity.

Capacity utilization has decreased. In 1977, capacity utilization was 11 percent lower than in 1974. In January through April 1978, capacity utilization was 71.3 percent, compared with 77.6 percent in January-April 1977. Between 1976 and the first 4 months of 1978, the average monthly employment of production and related workers in the manufacture of methyl alcohol decreased from 501 to 394.

Although domestic consumption of methy alcohol has increased in recent years, domestic producers' inventories of methyl alcohol have continued to increase. In 1974, domestic producers' inventories of methyl alcohol as a share of shipments were 8 percent. In 1977, the share was 20 percent, and data for the first 4 months of 1978 indicate that this trend of increasing inventories has continued.

Data on the financial performance of U.S. producers of methyl alcohol show a deteriorating trend in their methyl alcohol operations since 1974. The aggregate ratio of net operating profit to net sales has declined from 38 percent in 1974 to 17.2 percent in the first 4 months of 1978. Two producers indicated losses for both 1977 and January through April 1978. Domestic producers' average production costs per unit are increasing faster than the average value per pound of methyl alcohol shipped. On two different occasions within the past 2 years, complainant DuPont has announced price increases which it could not sustain.

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[1] Vice Chairman Bill Alberger and Commissioners George M. Moore and Catherine Bedell determine that, on the basis of information developed during the course of this inquiry, there is a reasonable indication that an industry in the United States is being or is likely to be injured by reason of the importation of methyl alcohol from Canada allegedly sold at less than fair value as indicated by the Department of the Treasury. Chairman Joseph O. Parker, concurring in this determination, does not determine that there is no reasonable indication that an industry in the United States is being or is likely to be injured by reason of the importation of methyl alcohol from Canada allegedly sold at less than fair value, as indicated by the Department of the Treasury. Commissioners Italo H. Ablondi and Daniel Minchew determine that there is a reasonable indication that an industry in the United States is likely to be injured by reason of the importation of methyl alcohol from Canada allegedly sold at less than fair value as indicated by the department of the Treasury.

[2] Prevention of establishment of an industry in this inquirey is not in question and will not be discussed further in these views.

Since 1976, the average value per pound of shipments from Alberta Gas Chemicals, Ltd., the only Canadian exporter, has been consistently lower than the corresponding value for U.S. producers' shipments by a significant margin, given the quantities shipped (357.7 million pounds) and the duty imposed on methyl alcohol (1.1 cents per pound). The difference between the value of the Canadian product and the U.S. product can be completely accounted for by the alleged LTFV margin of 1.8 cents per pound.

Imports of methyl alcohol from Canada have increased from virtually zero in 1974 to 5.5 percent of total apparent U.S. consumption in 1977 or approximately 11 percent of 1977 U.S. open-market consumption. Imports in the first 4 months of 1978 increased by more than 50 percent over the corresponding period of 1977. Since 1975, imports from Canada have accounted for 26 percent of the increase in U.S. open-market consumption and 16 percent of the increase in total consumption.

Three domestic producers provided the Commission with information of sales allegedly lost as a result of imports sold at LTFV. While some of these claims were difficult to verify because of transfer shipping, the Commission's investigation indicates that a significant volume of sales may have been lost to Canadian imports. Alberta Gas Chemicals, Ltd., has announced plans to construct two additional plants for the production of methyl alcohol by 1983. The United States is a major market for methyl alcohol produced by Alberta Gas Chemicals, Ltd., accounting for a substantial percentage of its production in 1977.

Conclusion

On the basis of the information established by this 30-day inquiry, we do not determine that there is no reasonable indication that an industry in the United States is being or is likely to be injured by reason of imports alleged to be sold at LTFV.

STATEMENT OF REASONS OF VICE CHAIRMAN BILL ALBERGER

Statutory criteria of section 201(c)(2)

If the Secretary of the Treasury concludes, during a preliminary investigation under the Antidumping Act, 1921, as amended, that there is substantial doubt regarding possible injury to an industry in the United States, he shall forward to the U.S. International Trade Commission (Commission) his reasons for such doubt. Within 30 days of receipt of the Secretary's reasons, the Commission shall determine whether there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established,[3] by reason of the importation of merchandise allegedly sold in the United States at less than fair value (LTFV). This inquiry, instituted on June 16, 1978, concerns methyl alcohol from Canada.

Determination

On the basis of information developed during the course of this inquiry, I determine that there is a reasonable indication that an industry in the United States is being or is likely to be injured by reason of the importation of methyl alcohol into the United States from Canada allegedly sold at less than fair value as indicated by the Department of the Treasury (Treasury).

Information regarding alleged margins of LTFV sales

Treasury advised the Commission that the petitioner alleged margins of LTFV sales of 48% of the U.S. market price or 32% of the home market price.

A Reasonable Indication of Injury

Imports from Canada.—Since 1974, imports from Canada have increased from virtually nothing to 358 million pounds in 1977, up to 5.5 percent of total U.S. consumption. The increase in imports appears to be continuing in 1978. Since about half of U.S. consumption is captive (by domestic producers themselves), imports from Canada amounted to 11 percent of open-market consumption in 1977.

U.S. production.—1973 was the highest level of production in the past 5 years. Domestic production declined slightly in 1974, sharply in 1975, and recovered in both 1976 and 1977, but was still slightly below the 1973 and 1974 levels in 1977. Domestic production during the first 4 months of 1978 was below that of the corresponding period of 1977.

Utilization of productive capacity.—In 1974, capacity utilization was 90 percent. It dropped sharply to 65 percent in 1975 before climbing back to 79 percent in 1977. Figures for the first 4 months of 1978 show a decline back to 71 percent, from the 78 percent experienced during the first 4 months of 1977.

Employment.—The data available to us shows a decline in the average monthly number of production and related workers engaged in the production of methyl alcohol from 501 in 1976 to 394 in the first 4 months of 1978.

Profitability.—Aggregate data for domestic producers show generally increasing net sales and net operating profits from methyl alcohol since 1974. However, the ratio of net operating profits to net sales has declined from 38 percent in 1974 to 17.2 percent in the first 4 months of 1978. Two of the eight producers show losses for 1977 and early 1978.

Inventories.—Since 1974, year-end inventories of methyl alcohol have increased steadily as a percentage of shipments.

Prices.—Since 1976, the average value per pound for the major importer's shipments has remained below the corresponding value for U.S. producers' shipments by a margin which could be completely accounted for by the alleged LTFV margin of 1.8 cents per pound. Since August of 1977, the major importer's weighted average price to its four principal customers has also been lower than U.S. producers. This appears to be due to the major importer's price on shipments to one U.S. producer which receives co-producers' prices. No comparable price data was received from any U.S. producers, since none of their four principal customers were other U.S. producers. The average unit value of methyl alcohol shipped by the major importer to trading companies and end users was higher than that of U.S. producers in both 1976 and 1977, but was lower than that of U.S. producers during the first 4 months of 1978. The average value per pound shipped by U.S. producers increased between 1976 and 1977, and increased further during January-April 1978. However, average unit production costs have increased at a faster rate, indicating the possibility of price suppression.

Lost Sales.—The staff was able to verify one source to which U.S. producers claim to have lost sales. This source has purchased large quantities of Canadian methyl alcohol in recent months.

Conclusion

In 30 day inquiries, the Commission need only find a reasonable indication of injury. Data on domestic production and capacity utilization shows no clear trends. Inventories are growing, profitability and employment seem to be declining, and imports from Canada are increasing. Our data on prices is somewhat confusing, as we appear to be comparing apples and oranges at one point. The possibility of price suppression is clearly present, and we do have one verified lost sale.

While all factors do not point in the same direction, on balance I believe there is a ". . . reasonable indication that an industry in the United States is being or is likely to be injured . . . by reason of the importation of methyl alcohol into the United States from Canada".

If Treasury finds sales at LTFV in this investigation, the Commission will be called upon to determine whether

[3] Prevention of establishment of an industry in this inquiry is not in question and will not be discussed further in these veiws.

this industry is indeed being injured by reason of such LTFV sales. In this opinion, I am certainly not prejudging that case. In fact, it will be important to this Commissioner to get better data on several factors, particularly prices.

STATEMENT OF REASONS OF COMMISSIONER ITALO H. ABLONDI [4]

On June 9, 1978, the United States International Trade Commission received advice from the Department of the Treasury that during the course of a preliminary investigation with respect to methyl alcohol from Canada, Treasury had concluded from the information available to it "that there is substantial doubt that an industry in the United States is being or is likely to be injured by reason of the importation of this merchandise into the United States." Acting upon this advice, the Commission, on June 16, 1978, instituted inquiry No. AA1921-Inq.-13, under section 201(c)(2) of the Antidumping Act, 1921, as amended, to determine whether there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Determination

On the basis of information developed during the course of this inquiry, I determine that there is a reasonable indication that an industry in the United States is likely to be injured, [5] by reason of the importation of methyl alcohol into the United States from Canada allegedly sold at less than fair value as indicated by the Department of the Treasury.

Discussion

The legislative intent in the enactment of section 201(c)(2) of the Antidumping Act, 1921, as amended, is "to eliminate unnecessary and costly investigations which are an administrative burden and an impediment to trade." [6] This intent is effectuated when the Commission determines, pursuant to section 201(c)(2), that "there is no reasonable indication that a domestic industry is being or is likely to be injured" by reason of the subject imports, thereby eliminating an unnecessary, costly, and burdensome investigation by Treasury. The information obtained in this inquiry requires a finding that there is a reasonable indication that an industry in the United States is likely to be injured by reason of the importation of methyl alcohol into the United States from Canada allegedly sold at less than fair value as indicated by the Department of the Treasury.

The antidumping complaint filed with Treasury by du Pont alleges that because of the importation of methyl alcohol from Canada at less than fair value (LTFV), the complainant (du Pont) and other domestic producers are being injured by reason of lost sales and price suppression.

Market penetration by imports from Canada

Imports of Canadian methyl alcohol comprise the bulk of U.S. imports. [7] The Canadian industry is composed of two firms, Alberta Gas Chemicals, Ltd., which accounts for approximately 85 percent of the methyl alcohol produced in Canada, and Celanese Chemical Co., Ltd. Only Alberta Gas exports methyl alcohol to the United States. In 1977, Alberta exported a very large proportion of its annual production to the United States. Imports from Canada have increased from virtually zero in 1974 to 358 million pounds in 1977. [8] This represents almost 10.9 percent of open-market apparent consumption. In addition, during the period from January to April 1978, there has been an increase of nearly 10 percent in imports over the corresponding period in 1977. This continuous pattern of growth and increased market penetration reveals the likelihood of injury to the domestic industry.

The plans to expand the Alberta Gas operation offer further evidence of likely injury to the domestic industry. Alberta Gas has plans to substantially increase its capacity in stages during the next 4 years. The present pattern of rapidly increasing exports to the United States coupled with the vast planned expansion of the Alberta Gas operation, with its probable additional increase in exports to the United States presents the likelihood of serious injury to the U.S. industry. [9]

Unlike the situation in the investigation of methyl alcohol from Brazil, there is present a continuous pattern of increasing imports currently affecting 11 percent of the open market, with the likelihood of greater increased imports in the future. Based on these facts we find there is a reasonable indication that the domestic methyl alcohol industry is likely to be injured.

By order of the Commission:

KENNETH R. MASON,
Secretary.

JULY 11, 1978.

[FR Doc. 78-19469 Filed 7-13-78; 8:45 am]

[4] Commissioner Daniel Minchew concurs in the result.

[5] Prevention of establishmnent of an industry in this inquiry is not in question and will not be discussed further in these views.

[6] See S. Rept. No. 93-1298, 93d Cong., 2d sess. p. 171, of the Committee on Finance of the U.S. Senate, which accompanied H.R. 10710, the bill which became the Trade Act of 1974.

[7] Canadian-produced methyl alcohol accounted for 86 percent of the total U.S. imports of methyl alcohol in 1977.

[8] As a percentage of total consumption, imports from Canada have increased from virtually 0 in 1974 to 5.5 percent in 1977.

[9] We are not convinced by the argument advanced in the Alberta brief that the increased output from the expanded operation will be exported primarily to the Pacific rim countries, and hence does not represent a threat to the domestic industry.

[4510-30]

DEPARTMENT OF LABOR

Employment and Training Administration

EMPLOYMENT TRANSFER AND BUSINESS COMPETITION DETERMINATIONS UNDER THE RURAL DEVELOPMENT ACT

Notice of Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed for the purposes given in the attached list. The financial assistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1924(b), 1932, or 1942(b).

The act requires the Secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services of facilities are invited to submit such information in writing within 2 weeks of publication of this notice to: Deputy Assistant Secretary for Employment and Training, 601 D Street NW., Washington, D.C. 20213.

Signed at Washington, D.C., this 10th day of July 1978.

ERNEST G. GREEN,
Assistant Secretary for Employment and Training.

APPLICATIONS RECEIVED DURING THE WEEK ENDING JULY 7, 1978

Name of applicant and location of enterprise	Principal product or activity
Caribbean Mushroom Co., Inc., Vega Baja, P.R..	Production of fresh mushrooms; sale of fresh and canned mushrooms.
Jerry Arnold Caldwell, Wynne, Ark.	General retail lumber and building material sales to public.
Cardel, Inc., Loiza, P.R..	Shopping center operation.
Venture Industries, Inc., Calhoun, Ga.	Manufacture of broadloom tufted carpet.
Hutchinson Industrial Corp., Hutchinson, Minn.	Manufacture of impact printer components, custom peripheral equipment encoders, and transducers.
IPSC Co., Inc., Stuttgart, Ariz.	Wholesale and retail sales of diesel engines, irrigation equipment, pipe and supplies.
Lake Hills Shopping Center, Bigfork, Mont.	Retail shopping centers.

[FR Doc. 78-19410 Filed 7-13-78; 8:45 am]

[4510-30]

MIGRANT AND OTHER SEASONALLY EMPLOYED FARMWORKER PROGRAMS

Change of Funding Cycle and Related Changes

AGENCY: Employment and Training Administration.

ACTION: Change in funding cycle of programs under Title III, section 303, of the Comprehensive Employment and Training Act.

SUMMARY: The Secretary of Labor, pursuant to section 97.204(c)(4) of Title 29, Subtitle A, deems it advisable to change the funding cycle of programs for migrant and other seasonally employed farmworkers operated under Title III, section 303, of the Comprehensive Employment and Training Act. The new funding cycle will be October 1 through September 30 and the effective date of the change will be October 1, 1979. The change is advisable for purposes of review, study, and evaluation of program direction, methodology, and impact. This notice outlines various changes in dates and procedures necessary to move to the new funding cycle.

EFFECTIVE DATE: July 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Harry Kranz, Acting Director, Office of Farmworker Programs, U.S. Department of Labor, 601 D Street, Washington, D.C. 20213, 202-376-7288.

NEW FUNDING CYCLE AND TRANSITION SCHEDULE

The purpose of this notice is to announce the decision of the Secretary of Labor to change the funding cycle for programs for migrant and other seasonally employed farmworkers funded under Title III, section 303 of the Comprehensive employment and Training Act of 1973, as amended.

Section 97.204(c)(4) of Title 29, Subtitle A, published in the FEDERAL REGISTER on January 7, 1977, provides that if the Secretary deems it advisable to alter the funding cycle, a revised funding cycle shall be published in the FEDERAL REGISTER on or about July 1 of any fiscal year.

This notice constitutes announcement of the change in the funding cycle and related changes in procedures for making grant applications for funds for section 303 programs. this notice also sets forth the schedule for announcing tentative allocations, announcing additional jurisdictions to be open to competition and accepting grant applications for programs to be operated after January 1, 1979.

Pursuant to § 97.204(c)(4), the Secretary has determined the funding cycle for section 303 programs will be October 1 to September 30. The effective date of this change will be October 1, 1979.

The change is advisable because it will place section 303 programs on the same funding cycle as most other programs under the Comprehensive employment and Training Act, thus conforming with the Federal fiscal year and enhancing opportunities for coordination between section 303 and other employment and training programs. In addition, the period of transition will permit full assessment of section 303 programs for the purpose of determining possible areas of improvement.

The new funding cycle will be achieved in this manner.

1. Section 303 programs will, in the next cycle, be funded from January 1, 1979, through September 30, 1979, at levels of not less than 75 percent of projected annual funding. Funding above 75 percent will be negotiated on the basis of past expenditure patterns in the program jurisdiction for the purpose of avoiding reductions in program activities.

2. Programs not required to compete under § 97.219 which are currently operating at satisfactory performance levels and which continue to show satisfactory performance levels through September 30, 1978, will be funded without competition for the January 1, 1979, through September 30, 1979, transition period.

3. Programs with unsatisfactory performance levels will have the jurisdiction declared open for competition for the period beginning Juauary 1, 1979.

4. Assessment of existing section 303 programs will be conducted according to performance standards established in § 97.237 of Title 29, Subtitle A or according to performance standards established in the grant.

5. Assessments will be completed and any additional jursidictions open to competition will be announced on or before September 22, 1978. Grantees to be funded without competition will be announced at the same time. State and jursidiction allocations will be announced at the same time or earlier.

6. Preapplications for Federal assistance, Standard Form 424, must be submitted no later than October 1, 1978.

7. Grant applications from potential grantees seeking to serve migrant and seasonal farmworkers in jurisdictions subject to competition must be submitted no later than November 1, 1978.

8. Modifications of existing section 303 grants for those grantees that will continue during the period January 1, 1979, through September 30, 1979, will be submitted no later than October 23, 1978.

9. The Office of Farmworker Programs will review grant applications from potential grantees in areas open to competition and announce potential grantees no later than November 21, 1978, and grants to be effective January 1, 1979, through September 30, 1979, will be approved by December 1, 1978.

10. Modifications of grants for the purpose of funding continuing programs will be processed and approved no later than November 23, 1978.

11. For fiscal 1978, the Secretary exercised the option contained in § 97.219(a) to negotiate grants without competition in certain instances where grantee performance was judged satisfactory. Section 97.219 provides that no program shall be operated in any jurisdiction for more than 2 years without competition. Under that provision these jurisdictions which were not open to competition for fiscal 1978 are, therefore, open to competition for the program period of January 1, 1979, through September 30, 1979: Alabama; County of Los Angeles, Calif.; Iowa; Louisiana; Massachusetts; Michigan; Minnesota; New Jersey; New Mexico; Tennessee; Texas; and Wisconsin. To the extent that dates or other provisions of §§ 97.204, 97.211, 97.212, and 97.214, conflict with the new dates and procedures set forth here, this announcement prevails.

Signed at Washington, D.C., this 10th day of July, 1978.

LAMOND GODWIN,
Administrator, Office of National Programs.

[FR Doc. 78-19468 Filed 7-13-78; 8:45 am]

[4510-43]

Mine Safety and Health Administration

[Docket No. M-78-77-C]

BURNRITE COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that Burnrite Coal Co., 803 Walnut Street, Ashland, Pa. 17921, has filed a petition to modify the application of 30 CFR 75.301 (air quantity), to its No. 3 Lykens Slope Mine, located in Ashland County, Pa., in accordance with section 101(c) of the Federal mine safety and Health Act of 1977, Pub. L. 95-164.

The substance of petitioner's statement is as follows:

(1) There is no history of harmful quantities of carbon dioxide and other poisonous gases, harmful quantities of methane are nonexistent and there has never been an ignition, explosion, or fire at the mine.

(2) Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

(3) High velocities and large air quantities in small cross sectional airways and manways present dangerous flying object hazards to miners and cause extremely uncomfortable damp and cold conditions, thus causing a difficulty in keeping miners on the job.

(4) For the reasons set forth above, the petitioner requests that the requirements of 30 CFR § 75.301 be modified for the above mine so that the minumum quantity of air reaching the working face be reduced to 1,500 cubic feet a minute; the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be reduced to 5,000 cubic feet a minute; and the minimum quantity of air reaching the intake end of a pillar line be reduced to 5,000 cubic feet a minute.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before August 14, 1978. Comments must be filed with the Office of Standards, Regulations and Variances, Mines Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

Dated: July 7, 1978.

ROBERT B. LAGATHER,
Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-19328 Filed 7-13-78; 8:45 am]

[4510-43]

[Docket No. M-78-73-C]

D & R MINING CORP.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that D & R Mining Corp., 625 Laurel Boulevard, Pottsville, Pa. 17901, has filed a petition to modify the application of 30 CFR § 75.301 (air quantity), to its Julia Slope Mine, Located in Schuylkill County, Pa., in accordance with section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of petitioner's statement is as follows:

(1) There is no history of harmful quantities of carbon dioxide and other poisonous gases, harmful quantities of methane are nonexistent and there has never been an ignition, explosion, or fire at the mine.

(2) Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

(3) High velocities and large air quantities in small cross sectional airways and manways present dangerous flying object hazards to miners and cause extremely uncomfortable damp and cold conditions, thus causing a difficulty in keeping miners on the job.

(4) For the reasons set forth above, the petitioner requests that the requirements of 30 CFR 75.301 be modified for the above mine so that the minimum quantity of air reaching the working face be reduced to 1,500 cubic feet a minute; the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be reduced to 5,000 cubic feet a minute; and the minimum quantity of air reaching the intake end of a pillar line be reduced to 5,000 cubic feet a minute.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before August 14, 1978. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

Dated: July 7, 1978.

ROBERT B. LAGATHER,
Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-19329 Filed 7-13-78; 8:45 am]

[4510-43]

[Docket No. M-78-79-C]

COUNCIL OF THE SOUTHERN MOUNTAINS, INC., AND DISTRICTS 12 and 17 OF THE UNITED MINE WORKERS OF AMERICA

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that the Council of Southern Mountains Inc., Drawer N, Clintwood, Va. 24228, District 12 of the United Mine Workers of America, Reisch Building, Room 800, 117 Fifth Street South, Springfield, Ill. 62701, and District 17 of the United Mine Workers of America, 1108 Union Building, Charleston, W. Va. 25301, have filed a petition to modify the application of 30 CFR §§ 75.1714 and 75.1714-1 (self-rescuers) to each of the mines represented by District 17 of the United Mine Workers of America, which are located in Boone, Fayette, Kanawha, Lincoln, Logan, Mason, Mingo, Raleigh, Wayne, and Wyoming counties, W. Va., and to each of the following mines: Martin County Coal Corp., Mine Nos. 1-C and 1-S, Martin Country, Ky.; Amax Coal Co.; Wabash Mine, Keeneburg, Ill.; Freeman United Coal Co., Crown No. 2 Mine. Virden, Ill., Orient No. 4 Mine, Pittsburg, Ill., and Orient Nos. 3 and 6 Mines, Waltonville, Ill.; Harrisburg Coal Co., Mine No. 1, Marion, Ill.; Inland Steel Co., Mine No. 1, Sesser, Ill. and Mine No. 2, McLeensboro, Ill.; Monterey Coal Co., Mine No. 1, Carlinville, Ill. and Mine No. 2, Albers, Ill.; Old Ben Coal Co., Mine No. 21, Sesser, Ill., Mine No. 24, Benton, Ill., Mine No. 25, West Frankfort, Ill. and Mine No. 26, Sesser, Ill.; Peabody Coal Co., Mine No. 10, Pawnee, Ill., Baldwin Mine, Marissa, Ill., Eagle No. 2 Mine, Shawneetown, Ill., and River King Underground Mine, Freeburg, Ill.; and Zeigler Coal Co., Mine No. 4, Johnson City, Ill., Mine No. 5, Murdock, Ill., Mine No. 11, Coulterville, Ill., Murdock Mine, Murdock, Ill., and Spartan Mine, Sparta, Ill. This petition has been filed pursuant to section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of Petitioners' statement is as follows:

(1) Petitioners seek to require that all miners in the above mines be equipped and trained in the use of self-contained oxygen-generating self-rescue devices within 6 months of a decision on their petition and allege that this proposed alternative will at all times guarantee no less than the same measure of protection than that afforded by the current requirements.

(2) The self-rescuers currently in use at the above mines are the filter-type self-rescuers, which merely filter out carbon monoxide gas and therefore do not provide protection against other toxic gases, against carbon-monoxide, and against oxygen-deficient mine atmosphere.

(3) The Secretary of Labor has not prescribed improved methods of assuring that miners are not exposed to mine atmospheres that are deficient in oxygen.

(4) The present application of the above-referenced standard poses a continuing and serious threat to the health and safety of the miners Petitioners represent.

(5) Petitioners state that self-contained oxygen-generating breathing devices exist which have been officially approved and which could be made available to and used in the above mines within 6 months of the date of a decision of this petition.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before August 14, 1978. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Va.

22203. Copies of the petition are available for inspection at that address.

Dated: June 7, 1978.

ROBERT B. LAGATHER,
Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-19330 Filed 7-13-78; 8:45 am]

[4510-29]
[4830-01]

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

DEPARTMENT OF THE TREASURY

Internal Revenue Service

TRANSACTION INVOLVING ENGINEERS JOINT PENSION FUND, LOCAL UNIONS 17, 106, 410, 463, 545, AND 832 OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS (APPLICATION NO. D-205)

Notice of Proposed Exemption

AGENCIES: Department of Labor, Department of the Treasury/Internal Revenue Service.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor and the Internal Revenue Service (the agencies) of a proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the code). The proposed exemption would exempt the purchase by the engineers joint pension fund, Local Unions 17, 106, 410, 463, 545, and 832 of the International Union of Operating Engineers (the plan) of a parcel of improved real property from the 4325 South Salina Street Corp. (the corporation). The proposed exemption, if granted, would affect participants and beneficiaries of the plan, the corporation, and other persons participating in the proposed transaction.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before August 10, 1078.

ADDRESSES: All written comments and requests for a hearing (at least six copies) should be sent to the Office of Regulatory Standards and Exceptions, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, Washington, D.C. 20216, Attention: Application No. D-205. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue NW., Washington, D.C. 20216, and at the Internal Revenue Service National Office Reading Room, 1111 Constitution Avenue NW., Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

Jay S. Neuman of the Department of Labor, 202-523-6855 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

REQUESTED EXEMPTION

Notice is hereby given of the pendency before the agencies of a proposed exemption form the restrictions of section 406(a) and 406(b)(2) of the act and from the taxes imposed by section 4975(a) and (b) of the code, by reason of section 4975(c)(1)(A) of the code. The pending exemption was requested in an application filed by the plan pursuant to section 408(a) of the act and section 4975(c)(2) of the code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722.

SUMMARY OF REPRESENTATIONS

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the agencies for the complete representations of the applicants.

1. The plan is a tax-qualified multiemployer pension plan. Three other plans, the engineers joint welfare fund (welfare fund), the engineers supplemental unemployement benefit fund (SUB fund), and the engineers joint apprentice training fund (training fund) are housed in the same office building as the plan.

2. The welfare fund, the SUB fund, and the plan are operated and administered by the same employees. All three plans have a single board of trustees, administrator, and administrative agent, and use the same actuary, accountant, legal adviser, and computer facilities. The three plans have the same participants and beneficiaries. Each of the three plans pays one-third of the rent and maintenance expenses for the 13,000 square feet of rental space currently used by the plans. Under the current lease the rental is $49,200 per year. Maintenace costs for the last fiscal year were approximately $24,000.

3. The building occupied by the plan and the three other funds is owned with its underlying real property by the 4325 South Salina Street Corp. (the corporation), a New York corporation which was organized for the purpose of holding title to the improved real property, located at 4325 South Salina Street, Syracuse, N.Y., for the use and benefit of the members of Local 545 of the International Union of Operating Engineers. Members of local 545 are among those who participate in the plan. One of the trustees of the plan is also the business manager of local 545.

4. The corporation desires to sell the improved real property, having no present need for it since local 545 now carries on its business at a separate location, in a building which was built for it. Additionally, local 545 is in need of cash, due to the construction of its new offices and to increased operating expenses.

5. In 1974 the plan negotiated with the corporation to purchase the office building and certain real property under and surrounding it in the Wight and Wight tract of the city of Syracuse for $402,000. The property consists of lots 9, 10, and 11 and the northerly 10 feet of lot 12 facing on South Salina Street and the adjoining lots 20 through 25, fronting on Randolph Street, which parallels South Salina Street, plus improvements—the office building and a parking lot. The total area of the lots involved is 64, 212 square feet. In February 1976 this real property with improvements was appraised at $440,000 by an independent real estate broker who has made appraisals for banks and others and who is familiar with the Syracuse real estate field. It is this proposed sale for which the exemption is requested.

6. The plan, which has occupied its present premises since 1960, and the welfare and SUB funds have made expenditures to customize the premises to their needs. The location of the building, moreover, is well known to participants and beneficiaries, and well suited to the operation of the plan.

7. In order to remain on the premises if it were sold to a third party, the plan would either have to purchase the premises from such third party or else rent from the third party. It is expected that the plan would have to pay in excess of $402,000 to purchase the premises from a third party. It is also expected that a third party would increase significantly the rental rates for the premises. In this regard, the applicant has submitted a letter dated January 30, 1976, from John Lynch of Egan Real Estate, Inc., which states that office and computer space in the Syracuse area of size and quality comparable to that found in the property would rent for $99,250 per year. A second letter, dated February 11, 1976, from Sherwood Finn of Longley-Jones Associates, Inc. (a real estate marketing services firm), estimates this figure at $94,500.

8. Alternatively, if, as a result of a sale of the premises to a third party, the plan were forced to seek other offices, the plan would incur substantial moving expenses. A letter dated February 12, 1976, from Whale Riggers & Erectors, Inc., states that it would cost

approximately $75,000 to move the plan and the funds to a new location.

9. As owner of the property, the plan would receive $44,000 per year from the welfare fund and SUB fund, comprised of $12,000 base rent from each fund and approximately $10,000 from each fund for maintenance and operational costs. In addition, the training fund occupies some 1,000 square feet of space in the building. Utilization of space by this fund will bring an additional revenue of approximately $6,000. Thus, the total revenue the plan would receive from the property would be approximately $50,000. Maintenance and operational costs are anticipated to be about $30,000.

10. The plan's audited statement of net assets available for plan benefits shows the plan as having a total of $40,655,909 in net assets as of March 31, 1977. Accordingly, the proposed sale would involve less than 1 percent of plan assets. The same statement indicates that less than 4 percent of plan assets was then invested in real estate.

NOTICE TO INTERESTED PERSONS

Within 30 days after publication by the agencies of this notice, plan participants and beneficiaries, the employee organization sponsoring the plan, and the organization of employers who contribute to the plan will be notified in the following manner: By a certified mailing of the notice to the plan and the respective local unions which participate in it, and to the employer organization; by a first class mailing of the notice to plan participants and beneficiaries; by publication of the notice in any local union newspaper which is published in the area; by posting the notice on all union bulletin boards and at all local union meeting places.

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the act and section 4975(c)(2) of the code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the act and the code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the act, which require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the act; nor does it affect the requirement of section 401(a) of the code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406 (b)(1) and (b)(3) of the act and section 4975(c)(1) (E) and (F) of the code;

(3) Before an exemption may be granted under section 408(a) of the act and section 4975(c)(2) of the code, the agencies must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the act and the code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction. This document does not meet the criteria for significant regulations set forth in paragraph 8 of the proposed Treasury directive appearing in the FEDERAL REGISTER for Wednesday, May 24, 1978 (43 FR 2319).

WRITTEN COMMENTS AND HEARING REQUEST

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the addresses set forth above.

PROPOSED EXEMPTION

Based on the facts and representations set forth in the application the agencies are considering granting the requested exemption under the authority of section 408(a) of the act and section 4975(c)(2) of the code and in accordance with procedures set forth in ERISA Procedure 75-1 and Rev. Proc. 75-26. If the exemption is granted, the restrictions of section 406(a) and 406(b)(2) of the act, and the taxes imposed by section 4975 (a) and (b) of the code, by reason of section 4975(c)(1)(A) of the code shall not apply to the purchase of the improved real property described above by the plan from the corporation for $402,000 in cash, provided that this amount is not more than the fair market value of such property.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 6th day of July 1978.

FRED J. OCHS,
Director, Employee Plans Division, Internal Revenue Service.

IAN D. LANOFF,
Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration.

[FR Doc. 78-19115 Filed 7-7-78; 9:57 am]

[4510-28]

Office of the Secretary

[TA-W-3712]

AMERICAN BRIDGE DIVISION, U.S. STEEL CORP., AMBRIDGE, PA.

Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initated on May 15, 1978, in response to a worker petition received on May 1, 1978, which was filed on April 28, 1978, on behalf of all workers producing structural steel shapes at the Ambridge, Pa. plant of the American Bridge Division of the U.S. Steel Corp.

Notice of investigation was published in the FEDERAL REGISTER on June 27, 1978, (43 FR 27923). No public hearing was requested and none was held.

The petitioning group of workers are identical to the group of workers included in the on-going worker petition investigation TA-W-3063. Therefore, continuation of this investigation TA-W-3712 would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C., this 30th day of June 1978.

HAROLD A. BRATT,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 78-19332 Filed 7-13-78; 8:45 am]

[4510-28]

[TA-W-3360]

COLORADO AND WYOMING RAILWAY CO., SUBSIDIARY OF C.F. & I. STEEL CORP., PUEBLO, COLO.

Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 20, 1978 in response to a worker petition received on February 24, 1978 which was filed on behalf of railroad carmen of the Colorado & Wyoming Railway Co. tranporting rails, seamless pipe, grader blades,

nails, track material, spikes, tie plates, rail anchors, wire and rods produced by C.F. & I. Steel Corp.

Notice of investigation was published in the FEDERAL REGISTER on March 28, 1978 (43 FR 12967). No public hearing was requested and none was held. The notice incorrectly identified the petitioners as employees producing the above products as C.F. & I. Steel Corp.

On December 6, 1977, a petition was filed on behalf of railroad carmen of the Colorado & Wyoming Railway Co. (TA-W-2814). Notice of investigation was published in the FEDERAL REGISTER on January 10, 1978 (43 FR 1555). Since the identical group of workers is the subject of the on-going investigation, TA-W-2814, a new investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C., this 29th day of June 1978.

HAROLD BRATT,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 78-19333 Filed 7-13-78; 8:45 am]

[4510-28]

[TA-W-3720]

NAGLER MANUFACTURING CORP., EAST BOSTON, MASS.

Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 16, 1978 in response to a petition received on May 9, 1978 which was filed on behalf of workers and former workers producing leatherettes, rubbersize shopping bags, plastic shoe bags, laundry bags and mail order specialities at the East Boston, Mass. plant of the Nagler Manufacturing Corp.

Notice of the investigation was published in the FEDERAL REGISTER on June 27, 1978 (43 FR 27923). No public hearing was requested and none was held.

The petitioners, in a letter dated June 9, 1978, requested the withdrawal of the petition. Consequently, the investigation has been terminated.

Signed at Washington, D.C., this 30th day of June 1978.

HAROLD A. BRATT,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 78-19334 Filed 7-13-78; 8:45 am]

[4510-28]

[TA-W-3809]

TRW CRESCENT WIRE & CABLE CO. DIVISION, TRENTON, N.J.

Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 5, 1978, in response to a worker petition received on May 30, 1978, which was filed on May 24, 1978, on behalf of workers producing building wire at the TRW Crescent Wire & Cable Co. Division, Trenton, N.J.

Notice of the investigation was published in the FEDERAL REGISTER on June 20, 1978, (43 FR 26498). No public hearing was requested and none was held.

The workers on whose behalf the petition was filed are identical to the group of workers included in the on-going worker petition investigation (TA-W-3747). Therefore, continuation of this investigation TA-W-3809 would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C., this 30th day of June 1978.

HAROLD A. BRATT,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 78-19335 Filed 7-13-78; 8:45 am]

[4510-28]

[TA-W-3668]

WEST NEW YORK SPORTSWEAR, WEST NEW YORK, N.J.

Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 8, 1978 in response to a worker petition received on April 28, 1978 which was filed by the International Ladies Garment Workers Union, Local 133 on behalf of workers and former workers producing ladies' sportswear at West New York Sportswear, West New York, N.J.

Notice of investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793-95). No public hearing was requested and none was held.

The petitioner, the International Ladies Garment Workers Union, requested withdrawal of the petition. The basis for the withdrawal was that the petition was filed in error. Consequently, the investigation has been terminated.

Signed at Washington, D.C., this 28th day of June 1978.

HAROLD A. BRATT,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 78-19336 Filed 7-13-78; 8:45 am]

[4510-27]

Wage and Hour Division

COLLEGE CASUALS CO. ET AL.

Certificates Authorizing the Employment of Learners at Special Minimum Wages

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act (52 Stat. 1062, as amended; U.S.C. 214), Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and Administrative Order No. 1-76 (41 FR 18949), the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the act. For each certificate, the effective and expiration dates, number or proportion of learners and the principal product manufactured by the establishment are as indicated. Conditions on occupations, wage rates, and learning periods which are provided in certificates issued under the supplemental industry regulations cited in the captions below are as established in those regulations; such conditions in certificates not issued under the supplemental industry regulations are as listed.

The following certificates were issued under the apparel industry learner regulations (29 CFR 522.1 to 522.9, as amended and 522.20 to 522.25, as amended). The following nomal labor turnover certificates authorize 10 percent of the total number of factory production workers except as othewise indicated.

College Casuals Co., Sheppton, Pa., April 23, 1978 to April 22, 1979, 10 learners for normal labor turnover purposes. (Ladies' slacks)

Flushing Shirt Manufacturing, Co., Inc., Waynesburg, Pa., April 18, 1978 to April 17, 1979, 10 learners for normal labor turnover purposes. (Men's shirts)

Michael Berkowitz Co., Inc., Frostburg, Md. March 29, 1978 to March 28, 1979, 10 learners for normal labor turnover purposes. (Men's sleepwear)

J. H. Rutter Rex Manufacturing Co., Inc., Franklinton, La., April 24, 1978 to April 23, 1979. (Men's and boys' pants)

J. H. Rutter Rex Manufactiring Co., Inc., Columbia, Miss., May 19, 1978 to May 18, 1979. (Men's and boys' shirts and pants)

Sancar Corp., Harrisonburg, Va., April 22, 1978 to April 21, 1979. (Ladies' underwear)

The following certificate was issued under the glove industry regulations (29 CFR 522.1 to 522.9, as amended and 522.60 to 522.65, as amended.)

Galena Glove & Mitten Co., Dubuque, Iowa, April 21, 1978 to April 20, 1979, 10 learner for normal labor turnover purposes. (Work gloves)

The following learner certificates were issued in Puerto Rico to the company hereinafter named. The effective and expiration dates, learner rates, occupations, learning periods and number of learners authorized to be employed are indicated.

Barranquitas Manufacturing Corp., Barranquitas, P.R., April 1, 1978 to March 31, 1979, 14 learners for normal

labor turnover purposes in the occupation of sewing machine operator for a learning period of 320 hours at the rate of $2.39 an hour. (Infants' dresses and crawlers)

Boringuen Gloves, Ponce, P.R., April 20, 1978 to April 19, 1979, 10 learners for normal labor turnover purposes in the occupation of sewing machine operator for a learning period of 480 hours at the rate of $2.07 an hour for the first 240 hours and $2.20 an hour for the remaining 240 hours. (Gloves)

General Cigar de Utaudo, S.A., Utuado, P.R., June 19, 1978 to June 18, 1979; 20 learners for normal labor turnover purposes in the occupation of cigar making machine operator for a learning period of 320 hours at the rate of $2.34 an hour for the first 160 hours and $2.44 an hour for the remaining 160 hours. (Tobacco)

Each learner certificate has been issued upon the representations of the employer which, among other things were that employment of learners at special minimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available.

The certificate may be annulled or withdrawn as indicated therein, in the manner provided in 29 CFR, Part 528. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof on or before July 31, 1978.

Signed at Washington, D.C., this 6th day of July 1978.

ARTHUR H. KORN,
Authorized Representative of the Administrator.

[FR Doc. 78-19331 Filed 7-13-78; 8:45 am]

[7536-01]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

ADVISORY COMMITTEE, HUMANITIES PANEL ANTHROPOLOGY FELLOWSHIP APPLICATIONS

Meeting

JULY 12, 1978.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the Humanities Panel will be held at 806 15th Street NW., Washington, D.C. 20506, in room 807, from 9 a.m. to 5:30 p.m. on August 16, 1978.

The purpose of the meeting is to review NEH Independent Fellowship applications in Anthropology submitted to the National Endowment for the Humanities for projects beginning after January 1, 1979.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call area code 202-724-0367.

STEPHEN J. MCCLEARY,
Advisory Committee Management Officer.

[FR Doc. 78-19440 Filed 7-13-78; 8:45 am]

[7536-01]

ADVISORY COMMITTEE, HUMANITIES PANEL

Meeting

JULY 12, 1978.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the Humanities Panel will be held at 806 15th Street NW., Washington, D.C. 20506, in room 807, from 9 a.m. to 5:30 p.m. on August 29, 1978.

The purpose of the meeting is to review NEH Independent Fellowship applications in Art History submitted to the National Endowment for the Humanities for projects beginning after January 1, 1979.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority of Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call area code 202-724-0367.

STEPHEN J. MCCLEARY,
Advisory Committee Management Officer.

[FR Doc. 78-19445 Filed 7-13-78; 8:45 am]

[7536-01]

ADVISORY COMMITTEE, HUMANITIES PANEL

Meeting

JULY 12, 1978.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the Humanities Panel will held at 806 15th Street NW., Washington, D.C. 20506, in room 314, from 9 a.m. to 5:30 p.m. on August 11, 1978.

The purpose of the meeting is to review NEH Independent Fellowship applications in French and Russian Literature submitted to the National Endowment for the Humanities for projects beginning after January 1, 1979.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call area code 202-724-0367.

STEPHEN J. MCCLEARY,
Advisory Committee Management Officer.

[FR Doc. 78-19436 Filed 7-13-78; 8:45 am]

[7536-01]

ADVISORY COMMITTEE, HUMANITIES PANEL

Meeting

JULY 12, 1978.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the Humanities Panel will be held at 806 15th Street NW., Washington, D.C. 20506, in room 807, from 9 a.m. to 5:30 p.m. on August 24, 1978.

The purpose of the meeting is to review NEH Independent Fellowship applications in German, Classical, and Near Eastern Literatures submitted to the National Endowment for the Humanities for projects beginning after January 1, 1979.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would consti-

tute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call area code 202-724-0367.

STEPHEN J. MCCLEARY,
Advisory Committee Management Officer.

[FR Doc. 78-19443 Filed 7-13-78; 8:45 am]

[7536-01]

ADVISORY COMMITTEE, HUMANITIES PANEL

Meeting

JULY 12, 1978.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the Humanities Panel will be held at 806 15th Street NW., Washington, D.C. 20506, in room 314, from 9 a.m. to 5:30 p.m. on August 18, 1978.

The purpose of the meeting is to review NEH Independent Fellowship applications in U.S. history submitted to the National Endowment for the Humanities for projects beginning after January 1, 1979.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call area code 202-724-0367.

STEPHEN J. MCCLEARY,
Advisory Committee Management Officer.

[FR Doc. 78-19441 Filed 7-13-78; 8:45 am]

[7536-01]

ADVISORY COMMITTEE, HUMANITIES PANEL

Meeting

JULY 12, 1978.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the Humanities panel will be held at 806 15th Street NW., Washington, D.C. 20506, in room 314, from 9 a.m. to 5:30 p.m. on August 22, 1978.

The purpose of the meeting is to review NEH Independent Fellowship applications in Music submitted to the National Endowment for the Humanities for projects beginning after January 1, 1979.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call area code 202-724-0367.

STEPHEN J. MCCLEARY,
Advisory Committee Management Officer.

[FR Doc. 78-19442 Filed 7-13-78; 8:45 am]

[7536-01]

ADVISORY COMMITTEE, HUMANITIES PANEL

Meeting

JULY 12, 1978.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the Humanities Panel will be held at 806 15th Street NW., Washington, D.C. 20506, in room 314, from 9 a.m. to 5:30 p.m. on August 16, 1978.

The purpose of the meeting is to review NEH Independent Fellowship applications in philosophy submitted to the National Endowment for the Humanities for projects beginning after January 1, 1979.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call area code 202-724-0367.

STEPHEN J. MCCLEARY,
Advisory Committee Management Officer.

[FR Doc. 78-19439 Filed 7-13-78; 8:45 am]

[7536-01]

ADVISORY COMMITTEE, HUMANITIES PANEL

Meeting

JULY 3, 1978.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the Humanities Panel will be held at 806 15th Street NW., Washington, D.C. 20506, in room 1130, from 9 a.m. to 5:30 p.m. on August 11, 1978.

The purpose of the meeting is to review NEH Research Collections Program applications submitted to the National Endowment for the Humanities for projects beginning after December 1, 1978.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call area code 202-724-0367.

STEPHEN J. MCCLEARY,
Advisory Committee Management Officer.

[FR Doc. 78-19435 Filed 7-13-78; 8:45 am]

[7536-01]

ADVISORY COMMITTEE, HUMANITIES PANEL

Meeting

JULY 3, 1978.

Pursuant to the provisions of the Federal Advisory Committee Act. (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the Humanities Panel will be held at 806 15th Street NW., Washington, D.C. 20506, in room 314, from 9 a.m. to 5:30 p.m. on August 25, 1978.

The purpose of the meeting is to review NEH Research Collections Program applications submitted to the National Endowment for the Humanities for projects beginning after December 1, 1978.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street N.W., Washington, D.C. 20506, or call area code 202-724-0367.

STEPHEN J. MCCLEARY,
Advisory Committee Management Officer.

[FR Doc. 78-19444 Filed 7-13-78; 8:45 am]

[7536-01]

ADVISORY COMMITTEE, HUMANITIES PANEL

Meeting

JULY 3, 1978.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the Humanities Panel will be held at 806 15th Street NW., Washington, D.C. 20506, in room 1130, from 9 a.m. to 5:30 p.m. on August 31, 1978.

The purpose of the meeting is to review NEH Research Collections Program applications submitted to the National Endowment for the Humanities for projects beginning after December 1, 1978.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call area code 202-724-0367.

STEPHEN J. MCCLEARY,
Advisory Committee Management Officer.

[FR Doc. 78-19446 Filed 7-13-78; 8:45 am]

[7536-01]

ADVISORY COMMITTEE, HUMANITIES PANEL

Meeting

JULY 12, 1978.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the Humanities Panel will be held at 806 15th Street NW., Washington, D.C. 20506, in room 807, from 9 a.m. to 5:30 p.m. on August 14, 1978.

The purpose of the meeting is to review NEH Independent Fellowship applications in sociology, education, and psychology submitted to the National Endowment for the Humanities for projects beginning after January 1, 1979.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call area code 202-724-0367.

STEPHEN J. MCCLEARY,
Advisory Committee Management Officer.

[FR Doc. 78-19438 Filed 7-13-78; 8:45 am]

[7536-01]

ADVISORY COMMITTEE, HUMANITIES PANEL

Meeting

JULY 12, 1978.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the Humanities Panel will be held at 806 15th Street NW., Washington, D.C. 20506, in room 314, from 9 a.m. to 5:30 p.m. on August 14, 1978.

The purpose of the meeting is to review NEH Independent Fellowship applications in Spanish and Far Eastern Literature submitted to the National Endowment for the Humanities for projects beginning after January 1, 1979.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call area code 202-724-0367.

STEPHEN J. MCCLEARY,
Advisory Committee Management Officer.

[FR Doc. 78-19437 Filed 7-13-78; 8:45 am]

[7590-01]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEES ON THE GENERAL ELECTRIC TEST REACTOR (GETR) AND EXTREME EXTERNAL PHENOMENA

Meeting Postponed

The July 21-22, 1978, meeting of the ACRS subcommittees on the General Electric Test Reactor (GETR) and Extreme External Phenomena announced in the FEDERAL REGISTER on June 16 and July 6, 1978 (43 FR 26161 and 29193) has been postponed indefinitely.

Dated: July 12, 1978.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc. 78-19667 Filed 7-13-78; 10:01 am]

[3110-01]

OFFICE OF MANAGEMENT AND BUDGET

MINORITY-OWNED ADVERTISING AGENCIES, PRODUCTION COMPANIES, AND MEDIA OUTLETS

List

AGENCY: Office of Federal Procurement Policy (OFPP), Office of Management and Budget.

ACTION: List of Minority-Owned Advertising Agencies, Production Companies, and Media Outlets.

SUMMARY: On May 25, 1978, a directory of minority-owned advertising agencies, production companies, and media outlets was published and distributed to all Federal Departments and Agencies. Each Department and Agency will apprise the firms listed of all advertising contracting and subcontracting opportunities. Our published directory follows.

This is part of the national program to increase Federal Government minority business awards and in the interest of increasing awards to minority business awards and in the interest of increasing awards to minority advertising agencies and other media organizations.

The list will be updated periodically. This notice invites those firms interested in being included in this directory to write stating their credentials and area of expertise.

DATES: Information to be received before August 15, 1978.

ADDRESS: Information should be addressed to the Administrator for Federal Procurement Policy, Office of Management and Budget, Washington, D.C., 20503.

FOR FURTHER INFORMATION CONTACT:

Dorothy Dickerson, Program Analysis Officer, 202-395-6990.

LESTER A. FETTIG,
Administrator, Office of Federal Procurement Policy.

MINORITY-OWNED BROADCAST PROPERTIES (COMMERCIAL)

RADIO

Alabama

WEUP-AM, 2609 Jordan Lane NW., Huntsville, Ala. 35806. Licensee: Leroy Garrett, President and General Manager, Garrett Broadcasting Inc.

WBIL-AM, Main Street, Box 666, Tuskegee, Ala. 36083; 205-727-2100. All Channel TV Service, Licensee: George Clay, General Manager.

WENN-AM/FM, Box 697, Birmingham, Ala. 35201. Licensee: Booker T. Washington Broadcasting Co.; President: A. G. Gaston; General Manager: Larry Hayes.

Alaska

KCAM (Athabascan), Glennallen, Alaska.

Arizona

KXEW-AM/FM, Tucson, Ariz.
KCLS (Navajo), Flagstaff, Ariz.
KDJI (Navajo), Holbrook, Ariz.
KINO (Navajo and Hopi), Winslow, Ariz.
KMDX (FM), Old Tribal Jail Bldg., Parker, Ariz. Licensee: Gilbert Leivas, D/B/A BINA Broadcasting Co., Parker, Ariz.

California

KJLH-FM (Compton), 384 South Crenshaw Blvd., Los Angeles, Calif. 90008. Licensee: John Lamar Hill, Owner and President; Rod McGrew, General Manager.

KACE-FM, 1710 East 111th St., Los Angeles, Calif. 90059. Bill Shearer, General Manager.

KSRT-FM, Stockton, Calif.
KBRG-FM, San Francisco, Calif.
KRDU, Dinuba, Calif.
KLIP, Fowler, Calif.

Colorado

KVFC (Navajo and Ute), Cortez, Colo.

Connecticut

WLVH-FM, Hartford, Conn.

District of Columbia

WHUR-FM, 2600 Fourth St. NW., Washington, D.C. 20059; 202-265-9494. Licensee: Howard University, Catherine Liggins, General Manager.

Florida

WTMP, P.O. Box 1101, Tampa, Fla. 33601; 813-626-4108. Licensee: Robert Gilder; Owner: R. A. McCleod, New Orleans.

WOWD-FM, P.O. Box 6065, Tallahassee, Fla. 32301; 904-386-5141. Licensee: Amrad Corporation; President: Dr. Claude Anderson; General Manager: Jim Boraddus.

Georgia

WAOK, 75 Piedmont Ave., NE., Atlanta, Ga. 30303; 404-659-1380. President: Mr. Ragan Henry; Licensee: Broadcast Enterprise Network, Inc., Suite 901, 1211 Chestnut Street, Philadelphia, Pa. 19107; 215-563-5678.

WRDW-AM, Box 1405, Augusta, Ga. 30903; 404-738-2513. Licensee: James Brown; President, JB Broadcasting Co.; Al Garner, General Manager.

WSOK-AM, Box 1288, Savannah, Ga. 31402; 912-232-3322. Licensee: Black Communications Corp. of Georgia, Inc.; Benjamin M. Tucker, Chairman and General Manager.

Hawaii

KHLO, Hilo, Hawaii.
KNDI, Honolulu, Hawaii.
KZOO, Honolulu, Hawaii.
KKON, Kealalekua, Hawaii.

Illinois

WJPC-AM, 820 South Michigan Ave., Chicago, Ill. 60605; 312-786-7200. Licensee: Johnson Publishing Co.; General Manager: Marvin Dyson.

WMPP-AM, 1000 Lincoln Highway, East Chicago Heights, Ill. 60611; 312-758-1400. Licensee: George Pinckard, Seaway Broadcasting Inc.; General Manager: Allen Wheeler.

Indiana

WTLC-FM, 2128 North Meridian St., Indianapolis, Ind. 48604. Licensee: Dr. Frank P. Lloyd, President, Community Media Corp.; 317-934-8861.

WCMX-FM, 424 Reed Rd., Fort Wayne, Ind. 46815; 210-422-4646. Licensee: HMH Communications Corp.; Charles Hatch, Owner, P.O. Box 6260, Fort Wayne, Ind. 46806.

Kentucky

WLOU-AM, 2549 South Third St., Louisville, Ky. 40208; 502-636-3535. Licensee: Summers Broadcasting, Inc.; Bill Summers, President and General Manager.

WSTM-FM, Oxmoor Shopping Center, P.O. Box 6011, Louisville, Ky. 40206. Licensee: Summers Broadcasting, Inc.; Don Rogan, General Manager.

Louisiana

WWIW-AM, New Orleans Superdome, New Orleans, La. 70153; 504-587-3000. Licensee: Lonnie Murray, 529 N St. SW., Washington, D.C. 20024; 202-488-8257.

Maryland

WEBB-AM, Clifton and Denison Sts., Baltimore, Md. 21216; 301-947-1245. Licensee: James Brown; President, J.B. Broadcasting; General Manager; James Clark.

Massachusetts

WILD-AM, 390 Commonwealth Ave., Boston, Mass. 02215; 617-267-1900. Licensee: Sheridan Broadcasting Corp.; General Manager: Al Williams.

Michigan

WCHB-AM, 32790 Henry Ruff Rd., Inkster, Mich. 48141; 313-278-1440. Licensee: Bell Broadcasting Corp.; General Manager: Dr. Wendell Cox.

WCHB-FM, 299 West Grand Blvd., Detroit, Mich. 48202; 313-871-0590. Licensee: Bell Broadcasting Corp.; General Manager: Robert Bass.

WGPR-FM, 3146 East Jefferson St., Detroit, Mich. 48207; 313-259-8862. Licensee: William V. Banks, President and General Manager, WGPR, Inc.; General Manager: James Panagos.

WWS-FM, 4624 Dixie Hwy., Saginaw, Mich. 48601; 517-777-8011. Licensee: Saginaw Broadcasting Co.; General Manager: Robert O'Bannon.

WJZZ-FM, 2994 East Grand Blvd., Detroit, Mich. 48202, 313-971-0590. Licensee: Bell Broadcasting Corp.; General Manager: Robert Bass.

Minnesota

KBUN (Chippewa), Bemidji, Minn.

Mississippi

WORV-AM, 604 Gussie Ave., Hattiesburg, Miss. 39401; 601-544-1941. Licensee: Vernon Floyd, President and General Manager, Circuit Broadcasting Co.

WBAD-FM, Box 4426, 7 Oaks Rd., Greenville, Miss. 38701. General Manager and President: William D. Jackson.

WTNK, Greater Mississippi Life Bldg., Meridian, Miss. 39301; 601-693-3242/1961. President: Charles L. Young; General Manager: Len Maith.

Missouri

KPRS-AM/FM, 2301 Grand Ave., Kansas City, Mo. 64108; 816-471-2100. Andrew R. Carter, President, KPRS Broadcasting Co.; John E. Carter, General Manager.

Nebraska

KOWH-AM/FM, 3910 Harney St., Omaha, Nebr. 68131; 402-422-1600. Licensee: Reconciliation Inc.; General Manager: Keith Donald.

New Jersey

WNJR, 17 Union Ave., Union, N.J. 07083; 201-688-5000. Station Manager: William Donahue; Owner: Dan Robinson.

WUSS-AM, 1500 Absecon Blvd., Atlantic City, N.J. 08401; 609-344-5861, 347-4200. Licensee: President: Edward L. Darden; General Manager: John Hickman; Atlantic Business and Community Development, Atlantic City, N.J.

New Mexico

KABQ, Albuquerque, N.M.
KRDD, Roswell, N.M.
KEDE, Santa Fe, N.M.
KENN (Navajo), Farmington, N.M.
KWYK (Navajo), Farmington, N.M.
KGAK (Navajo), Gallup, N.M.
KKIT (Taos Pueblo), Taos, N.M.

New York

WLIB-AM/WBLS-FM, 801 Second Ave., New York, N.Y. 10017; 212-661-3344. Licensee: Pierre Sutton, Inter City Broadcasting Co.

WUFO-AM (Amherst/Buffalo), 89 La Salle Ave., Buffalo, N.Y. 14214; 716-834-1080. Licensee: President: Paul Yates; Sheridan Broadcasting Corp.; General Manager: Don Mullins.

WDKX-FM, 1337 Main Street East, Rochester, N.Y. 14609; 716-288-5470. Licensee: Monroe Broadcasting Co., Inc.; President: Andrew Langston; General Manager: Bill Curtis.

WEVD, New York, N.Y.

North Carolina

WGIV-AM, New GIV, Inc., Box 3856, Charlotte, N.C. 28203; 704-333—0131. Licensee: Tod Branson: Vice President, Broadcast Enterprises Network, Inc.; General Manager: Ken Goldbratt.

WVOE-AM, P.O. Box 328, Chadbourn, N.C. 29431; 919-654-3991. Licensee: Lester Moore, President, Ebony Enterprises, Inc.; Stacy Newkirk, General Manager.

WBMU-FM, 90 Lookout Rd., Asheville, N.C. 28804; 704-253-5381. Licensee: Greater Asheville Educational Radio Association; General Manager: James Robinson.

Ohio

WELX-AM, P.O. Box 456, Xenia, Ohio 45385; 513-372-7649. General Manager and President of Corporation: Harold Wright; Owner: H & H Broadcasters; Vice-President: Philip Wright.

WCIN, 106 Glenwood Ave., Cincinnati, Ohio 45217. H. E. Sonny Burns, Vice President/General Manager.

WHBM-FM, P.O. Box 456, Xenia, Ohio 45385; 513-372-7649. Licensee: H & H Broadcasters, Inc.; President: Harold Wright.

Oklahoma

KOLS (Cherokee), Pryor, Okla.

Pennsylvania

WAMO-AM/FM, 1811 Boulevard of Allies, Pittsburgh, Pa. 15219; 412-471-2181. Licensee: Ronald Davenport, Chairman, Sheridan Broadcasting; President: Paul Yates, 943 North Sheridan, Ave., Pittsburgh, Pa. 15219; 412-281-6747 or 434-6280.

South Carolina

WOIC-AM, P.O. Box 565, Columbia, S.C. 29202; 803-796-0927. Licensee: Nuance Corp., P.O. Box 565, Columbia, S.C. 29202; General Manager: Elliott Franks.

South Dakota

KCCR (Sioux), Pierre, S.D.
KYNT (Sioux), Yankton, S.D.

Tennessee

WJBE-AM, P.O. Box 281, Knoxville, Tenn. 37914; 615-637-1430. Licensee: James Brown, President, JB Broadcasting, Ltd.; General Manager: Jim Clark.

WLOK-AM, 363 South Second St., Memphis, Tenn. 38103; 901-527-9565. Art Gilliams, President and General Manager.

Texas

KMXX-FM, Austin, Tex.
KCCT, Corpus Christi, Tex.
KESS, Dallas-Fort Worth, Tex.
KLVL, Houston, Tex.
KLFB, Lubbock, Tex.
KIRT, Mission, Tex.
KEDA, San Antonio, Tex.

KNOK-AM/FM, 3601 Kimbo ST., Fort Worth, Tex. 76111. Licensee: EGG Dallas Broadcasting, Inc.; General Manager: Mr. Waynett Sobers.

KOOH-AM, 5011 Almeda, Houston, Tex. 77004; 713-522-1001. Licensee: Call of Houston, Inc.; General Manager: Mike Petrizzo.

KTSU-FM, Texas Southern University, Houston, Tex. 77004; 713-527-7175. Licensee: Texas Southern University; General Manger: Mike Petrizzio.

Utah

KUTA (Navajo), Blanding, Utah.

Virginia

WPCE-AM/WOWI-FM, 1010 Park Ave., Norfolk, Va. 23504; 804-622-4600. Licensee: L.E. Willis, President, Metro Communications.

Washington

KBLE, Seattle, Wash.

KYAC-FM, 427 3d Ave., Seattle, Wash. 98119; 206-624-9650. Licensee: Donald T. Dudley, President and General Manager, Dudley Communications, Limited.

Wisconsin

WNOV-AM, 3801 North 20th St., Milwaukee, Wis. 53206; 414-445-1986. Licensee: Jerrel W. Jones, President and General Manger, Courier Communications Corp.

Virgin Islands

WVIS-FM, Box 1403, St. Croix, Virgin Islands 00840; 809-772-0968. General Manager: Julio Rahr.

RADIO DISTRIBUTION NETWORK

National Black Network, 1350 Avenue of the Americas, New York, N.Y. 10019.

TELEVISION

Michigan

WGPR-TV, Channel 2, 3140 East Jefferson, Detroit, Mich. 48207. Licensee: WGPR-TV, Inc.; General Manager: Dr. William B. Banks.

Virgin Islands

WBNB-TV, Channel 10, P.O. Box 1947, Charlotte Amalie, St. Thomas, U.S. Virgin Islands 00801. Licensee: Island Teleradio Service, Inc.; General Manager: Ms. Shirlee T. Haizlip.

WVIS-TV, Channel 8, P.O. Box 487, Christiansted, St. Croix 00820; 809-772-2257. Licensee: Peoples Broadcasting Corp.; General Manager: Arthur L. Swanson.

MINORITY ADVERTISING FIRMS

Burrell Advertising, Thomas J. Currell, President, 625 North Michigan Ave., Chicago, Ill. 60601; 312-266-0880.

Ralph Kolconay, Barbara Proctor, President, Proctor & Gardner, 111 East Wacker Dr., Chicago, Ill. 60601; 321-644-7950.

Uniworld Group, Inc., Byron Lewis, President, Shirley Kalunda, 101 Park Ave., New York, N.Y.

Frank Mingo, Carolyn Jones, and Richard Guilmenot, 485 Lexington Ave., New York, N.Y. 10017; 212-697-4515.

Rogers, Watkins & Brown, Suite 519, Statler-Hilton, Buffalo, N.Y. 14202; 716-856-5450.

Thomas Buffington Associates, Inc., 1053 31st St., NW., Washington, D.C. 20007; 202-337-1750.

Wilson, Baptiste & Associates, Inc., 4500 Connecticut Ave., NW., Suite 206, Washington, D.C. 20015; 202-785-2931.

Azure Blue: 12429 Cedar Rd., Suite 28, Cleveland Heights, Ohio 44106; 216-368-1100 and One Pennsylvania Plaza, Suite 2215, New York, N.Y. 10001; 212-736-4660.

Ong & Associates, Inc., 485 Madison Ave., New York, N.Y. 10022.

Joseph A. Davis Consultants, Inc., 104 East 49th St., New York, N.Y. 10016.

O'Field Dukes & Associates, National Press Building, Suite 716, Washington, D.C. 20004.

Burns Public Relations, Inc., 666 Euclid Ave., Cleveland, Ohio 44114.

Inez Kaiser & Associates, 906 Grand Ave., Kansas City, Mo. 64106.

Cunningham, Short Berryman & Associates, 2120 West 8th St., Los Angeles, Calif. 90057.

Blackside, Inc., Henry Hampton, 501 Shawmut Ave., Boston, Mass. 02118.

Amelcar Tirado Film Production, Amelcar Tirado, 100 West 94th St., Apt. 156, New York, N.Y. 10025.

Image 7, Dan More, 75 Piedmont Ave., NE., Atlanta, Ga. 30303.

Tilmon Productions, Inc., James Tilmon, 589 Clavey Court, Highland Park, Ill. 60035.

Meta 4 Productions, Inc., Terry Carter, 8727 West 3d St., Suite 203, Los Angeles, Calif. 90048.

Polymedia Corp., Robert W. Dockery, Jr., 5371 Wilshire Blvd., Suite 212, Los Angeles, Calif. 90036.

United Communications, Inc., Oliver Wilson, President, 707 Northland Towers East, Southfield Mich. 48075; 313-569-7047.

The Link Advertising Corp., Castor A. Fernandez, President, 101 Park Ave., Room 204, New York, N.Y. 10017; 212-686-6048.

New Wave Communications, 1612 K St. NW., Suite 508, Washington, D.C. 20006.

MINORITY PRODUCTION FIRMS

Parrott & People Productions, 132 Madison Ave., New York, N.Y. 10016.

Lakeshore Productions, 360 North Michigan Ave., Chicago, Ill. 60601; President: Nathaniel Grant; 312-236-1890.

The Real & Realities, 9340 South Lafayette Ave., Chicago, Ill. 60620; President: Jarvus Grant.

Sigma Sports, Inc., 50 West 96th St., New York, N.Y. 10025; President: Dick Martin; 212-245-3560.

Toussant Group, 420 East 51st St., New York, N.Y. 10022.

Wm. Greaves Production, 1776 Broadway, New York, N.Y. 10019.

James E. Hinton Entertainment, 159 West 53d St., New York, N.Y. 10019.

Peconic Bay Telecommunications, P.O. Box 633, James Port, N.Y. 11947, Attention: Antonio De Grasse.

[FR Doc. 78-19547 Filed 7-13-78; 8:45 am]

[8010-01]

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

FRIGITEMP CORP.

Suspension of Trading

JULY 7, 1978.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the securities of Frigitemp Corp. being traded on a national securities exchange or otherwise is required in the public interest and for the protection of investors;

Therefore, pursuant to section 12(k) of the Securities Exchange Act of 1934, trading in such securities on a national securities exchange or otherwise is suspended, for the period from July 7, 1978, at 10:15 a.m. through July 16, 1978.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-19393 Filed 7-13-78; 8:45 am]

[8010-01]

[Release No. 34-14943; File No. SR-MSRB-77-12]

MUNICIPAL SECURITIES RULEMAKING BOARD

Self-Regulatory Organizations; Proposed Rule Changes

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 30, 1978 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission the proposed rule changes as follows:

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGES

On September 20, 1977, the Municipal Securities Rulemaking Board (the "Board") filed with the Securities and Exchange Commission (the "Commission") a series of proposed rules and rule amendments (File No. SR-MSRB-77-12), the general purpose of which is to codify basic standards of fair and ethical business conduct for municipal securities professionals. The Board has recently filed amendments to certain of such proposed rules (hereafter the amendments are referred to as the "proposed rule changes"). The text of the proposed rule changes appears below.

The proposed rule changes effect modifications in proposed rule D-8, which defines the term "bank dealer" as used in the rules of the Board, and in proposed rule G-19 concerning the suitability of recommendations and transactions in municipal securities.

STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule changes are as follows:

PURPOSE OF PROPOSED RULE CHANGES

RULE D-8

The purpose of the proposed rule changes relating to rule D-8 is to clarify that the fiduciary activities of a bank are not intended to be included within the scope of Board regulation. Such activities, which are conducted by trust department personnel, are subject to regulation by State and Federal banking authorities.

Under the proposed rule changes, certain fiduciary activities are specifically excluded from the scope of Board regulation. The activities thus excluded are based on the definition of the term "fiduciary" set forth in regulations promulgated by the Comptroller of the Currency with respect to the fiduciary powers of national banks.[1] In addition to the categories of fiduciary activities specifically referred to in such definition, investment advisory activities conducted by bank trust department personnel pursuant to written agreements are also considered fiduciary activities by the Comptroller of the Currency and subject to trust department regulation.[2] Such activities would be excluded from the scope of Board regulation.[3]

PROPOSED RULE G-19

Proposed rule G-19 establishes requirements concerning the suitability of recommendations of and transactions in municipal securities by brokers, dealers, and municipal securities dealers. The purposes of the proposed rule changes in section (a) of proposed rule G-19 are to make explicit the requirement under paragraph (a)(i) that a municipal securities professional must in fact believe that its recommendations are suitable or, alternatively, under paragraph (a)(ii), that its recommendations are not unsuitable. The proposed rule changes are not intended to shift the burden of proof from the party making a claim pursuant to rule G-19 to the party responding to such claim.

The purpose of the proposed rule changes in section (b) of proposed rule G-19 is to conform the language in such section to other proposed rules of the Board.[4] The reference to effecting transactions is intended to refer not only to the actual execution of a transaction, but also to the situation in which a municipal securities professional causes a transaction to be executed by a third party, as in the case of an introducing broker.

BASIS UNDER THE ACT FOR PROPOSED RULE CHANGES

The Board has adopted the proposed rule changes pursuant to section 15B(b)(2) of the Securities Exchange Act of 1934, as amended (the "Act"), which authorizes the Board to adopt rules governing transactions in municipal securities effected by brokers, dealers, and municipal securities dealers, and in accordance with the standards set forth in section 15B(b)(2)(C) of the act, which provides in part that the Board's rules shall—

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, * * * to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest; and [shall] not be designed to permit unfair discrimination between customers, issuers, municipal securities brokers, or municipal securities dealers * * *.

COMMENTS RECEIVED FROM MEMBERS, PARTICIPANTS, AND OTHERS ON PROPOSED RULE CHANGES

The Board originally filed the proposed rules which are the subject of the proposed rule changes on September 20, 1977 (File No. SR-MSRB-77-12). On May 18, 1978, the Board issued an exposure draft for public comment setting forth the proposed rule changes. A limited number of comments were received on the exposure draft. The Federal Deposit Insurance Corporation and the Public Securities Association endorsed the proposed rule changes. A representative of the Board of Governors of the Federal Reserve System suggested that the proposed rule changes in rule D-8 were too narrow and should be broadened to include all activities conducted by a bank pursuant to trust powers. The Dealer Bank Association and the American Bankers Association raised questions of interpretation concerning the proposed rule changes in rule D-8. For the reasons set forth above, the Board is of the view that the proposed rule changes in rule D-8 are necessary and appropriate.

With respect to the proposed rule changes in proposed rule G-19, The First National Bank of Chicago expressed concern that such changes would shift the burden of proof from the complainant to a respondent in a proceeding pursuant to the rule. The Dealer Bank Association stated that the proposed rule changes might add a new area of exploration in litigation involving rule G-19. The Board does not intend the proposed rule changes

[1] 12 CFR 9 (1977).

[2] See 5 Fed. Banking L. Rep. (CCH), par. 58,713.286, .287.

[3] In contrast, recommendations to and execution of transactions for an account established solely as a bank safekeeping account would be subject to Board regulation.

[4] See, e.g., proposed rule G-22.

to shift the burden of proof in a proceeding involving rule G-19. The Board believes it appropriate to state explicity that a municipal securities professional may not recommend a municipal security if the professional believes the recommendation to be unsuitable.

BURDEN ON COMPETITION

The Board is of the opinion that the proposed rule changes will not impose any burden on competition among brokers, dealers or municipal securities dealers not necessary or appropriate in furtherance of the purposes of the Act.

On or before August 28, 1978, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted within 21 days of the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

SHIRLEY E. HOLLIS,
Assistant Secretary.

JULY 7, 1978.

TEXT OF PROPOSED RULE CHANGES[5]

Rule D-8. "Bank Dealer."

The term "bank dealer" shall mean a municipal securities dealer which is a bank or a separately identifiable department or division of a bank as defined in rule G-1 of the Board. Except as otherwise specifically provided by rule of the Board, the activities of a bank dealer subject to Board rules shall not include the [fiduciary] activities of the bank conducted [pursuant to trust powers granted under state or federal law] *in a fiduciary capacity as trustee, executor, administrator, guardian of estates, assignee, receiver, managing agent (as defined in 12 C.F.R. § 9.1(i) (1977)) or any other similar capacity.*[6]

Rule G-19. Suitability of Recommendations and Transactions.

(a) Customer Information. No broker, dealer, or municipal securities dealer shall recommend the purchase, sale, or exchange of a municipal security to a customer unless such broker, dealer, or municipal securities dealer, after reasonable inquiry,

(i) has reasonable grounds to believe *and does believe* that the recommendation is suitable for such customer on the basis of information furnished by such customer concerning the customer's financial background, tax status, and investment objectives and any other similar information concerning the customer known by such broker, dealer, or municipal securities dealer, or

(ii) has no reasonable grounds to believe *and does not believe* that the recommendation is unsuitable for such customer if all of such information is not furnished or known.

* * * * *

(b) Churning. No broker, dealer, or municipal securities dealer shall recommend transactions in municipal securities to a customer, or effect such transactions [or cause such transactions to be effected] for a discretionary account, that are excessive in size or frequency in view of information known to such broker, dealer, or municipal securities dealer concerning the customer's financial background, tax status, and investment objectives.

(c) No change.

[FR Doc. 78-19395 Filed 7-13-78; 8:45 am]

[5]Marked to show changes from proposed rule changes currently filed with the Commission. Italics indicate new language; [brackets] indicate deletions.

[6]The term "managing agent" is defined by the Comptroller of the Currency in 12 C.F.R. 9.1(i) to mean "the fiduciary relationship assumed by a bank upon the creation of an account which names the bank as agent and confers investment discretion upon the bank. * * *"

[8010-01]

[Rel. No. 34-14916]

NATIONAL SECURITIES EXCHANGES

Standardized Options

JUNE 30, 1978.

The Securities and Exchange Commission today announced that it has sent letters to each national securities exchange which presently trades standardized options [1] containing proposed guidelines for the replacement of involuntarily delisted options classes during the voluntary moratorium on further expansion of standardized options trading which the Commission requested on June 22, 1978.[2]

The text of those letters, which are substantially idential, is as follows:

* * * * *

DEAR ——: I am enclosing the proposed guidelines for the replacement of involuntarily delisted options classes which Chairman Williams, in his June 22, 1978 letter to you, indicated would be sent this week to those self-regulatory organizations which the Commission has requested continue to honor, on a voluntary basis, the current moratorium on further expansion of standardized options trading. As the Chairman advised you in his June 22 letter, if all affected self-regulatory organizations agree to this request, the Commission intends to permit those exchanges which currently trade options to replace involuntarily delisted options classes upon application approved by the Commission. The purpose of such replacements will be to preserve, to the extent practicable, the status quo with respect to the total number of options classes traded by each existing options exchange during the pendence of the moratorium.

The enclosed guidelines reflect the staff's views as to the standards which should be applied by the Commission in considering replacement applications. The Commission and the staff will, of course, consider making appropriate modifications to these guidelines before they are put in final form, provided that all the affected options exchanges mutually agree that such modifications are appropriate. In order to enable the Commission to evaluate any modifications proposed by the self-regulatory organizations and to issue its final guidelines before July 31, 1978, the last date on which the Commission expects the self-regulatory organizations to respond to its June 22 request, it will be necessary for us to receive your suggestions for changes in the guidelines no later than July 12, 1978. To facilitate the process of securing agreement to any suggested modifications to the staff's proposed guidelines, please also provide copies of your suggestions to all other options exchanges on or before the date on which those suggestions are submitted to us.

If you have any questions concerning the proposed guidelines, please do not hesitate to contact me or the members of my staff who are working on this matter, Kathryn B. McGrath and Gene E. Carasick.

Sincerely,

ANDREW M. KLEIN,
Director.

Enclosure.

APPENDIX

GUIDELINES FOR THE REPLACEMENT OF INVOLUNTARILY DELISTED OPTIONS CLASSES

During the period while the voluntary moratorium is in effect, involuntarily delisted options classes (i.e., options classes for which the underlying security fails to meet the requirements set forth in the rules of the exchange necessary to maintain approval for options trading) may be replaced with options classes of the same type (i.e., put or

[1]Those exchanges which presently trade standardized options are: the American Stock Exchange, Inc.; the Chicago Board Options Exchange, Inc.; the Midwest Stock Exchange, Inc.; the Pacific Stock Exchange, Inc; and the Philadelphia Stock Exchange, Inc. Copies of the letter were sent to the New York Stock Exchange, Inc. and the National Association of Securities Dealers.

[2]See Securities Exchange Act Release No. 14878 (June 22, 1978).

call)[3] upon application approved by the Commission as follows:

1. Involuntarily delisted classes may not be replaced with a class of options already listed on another exchange, except under the narrow circumstances outlined in subparagraph 5 below.

2. Replacement applications may be filed with the Commission on or after, but not before, the date on which the exchange notifies the OCC that delisting procedures ("phaseout") must be commenced with respect to a particular options class. The Commission will act upon such applications at the time it acts upon the exchange's application to the Commission, pursuant to Securities Exchange Act Rule 12d2-2(c), to strike the involuntarily delisted class from listing and registration.

3. Trading may commence in an approved replacement class when the last series of the delisted class expires.

4. Applications for replacement of involuntarily delisted options classes will be considered by the Commission according to the order in which OCC received notice that a phaseout must be commenced with respect to a particular options class (e.g., the application of an exchange which notified OCC in October 1977, of the commencement of a phaseout would have priority in selecting a replacement over an exchange which notified OCC of the commencement of a phaseout in December 1977).

5. In the case of replacement applications which seek to list the same class and where the applicant exchanges gave notice to OCC of the commencement of a phaseout on the same day, the applicant exchanges first shall be afforded an opportunity to resolve among themselves the question of which of them shall be entitled to consideration of its listing application. If they cannot resolve the matter, the Commission will not consider any of such applications. Should two or more exchanges apply simultaneously for the same replacement class, where that class previously had been listed on, and was involuntarily delisted by one or more of the applicants, the exchange or exchanges which previously had listed the class shall be entitled to priority in listing that class as a replacement. If the class had been listed on more than one exchange previously, the Commission will permit each exchange to relist that class.

* * * * *

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-19394 Filed 7-13-78; 8:45 am]

[3] In this connection, an options exchange which involuntarily delists an option in which both puts and calls are traded, the call class may be replaced with any call class not traded on another exchange, and the put class similarly may be replaced with any put class not traded on another exchange, whether or not the put and call replacement classes are upon the same underlying security.

[8010-01]

[Release No. 14945; File No. SR-NYSE-78-21]

NEW YORK STOCK EXCHANGE, INC.

Notice of Extension of Comment Period Concerning Proposed Rule Change

JULY 7, 1978.

On March 29, 1978, the New York Stock Exchange, Inc. ("NYSE") filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which would rescind NYSE Article XIV and Rule 345(c), add a new Article XIV and Rules 476 and 477 and amend Articles III, X and XI. Those proposed amendments are intended to conform the NYSE's disciplinary rules to the provisions of the Act, to organize those rules into a uniform body of enforcement regulations and to clarify certain procedural requirements.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-14755, May 12, 1978) and by publication in the FEDERAL REGISTER (43 FR 23065, May 30, 1978).

On June 22, 1978, the Association of Investment Brokers requested that the Commission extend the time for filing comments concerning this rule proposal.[1] The Association stated that it had only recently become aware of the proposed rule change and was waiting for a copy of the submission to be received from the NYSE so that the Association could develop its comments.

In response to the above request for an extension of the comment period and upon our inquiry the NYSE agreed to extend the time for Commission consideration of the rule proposal until September 5, 1978.

Accordingly, the Commission hereby extends until August 4, 1978 the time for filing written data, views and arguments concerning the submission. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NYSE-78-21.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of the filing and of the subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

SHIRLEY E. HOLLIS,
Assistant Secretary.

[FR Doc. 78-19392 Filed 7-13-78; 8:45 am]

[1] Letter from Merrill J. Chapman, president of the Association of Investment Brokers, to Joel Worshtil of the SEC staff, June 22, 1978.

[4910-62]

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES COAST GUARD AND THE MATERIALS TRANSPORTATION BUREAU

Waterfront liquefied Natural Gas Facilities

AGENCY: Department of Transportation.

ACTION: Notice.

SUMMARY: The U.S. Coast Guard and the Materials Transportation Bureau have executed a memorandum of understanding with respect to the division of their regulatory responsibilities for waterfront liquefied natural gas facilities.

EFFECTIVE DATE: February 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert Beauregard, Office of the Chief Counsel, Research and Special Programs Administration, 2100 Second Street SW, Washington, D.C. 20590, 202-755-4972, and
Lt. Comdr. Edward H. Bonekemper, USCG, Port Safety and Law Enforcement (G-WLE 1/73), United States Coast Guard, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-1927.

SUPPLEMENTAL INFORMATION: Due to the public interest in liquefied natural gas (LNG) matters, it is appropriate that public notice be given of an agreement entered into by two Department of Transportation (DOT) elements. The following memorandum of understanding (MOU) reflects the division of responsibilities for waterfront LNG facilities between the U.S. Coast Guard and the Materials Transportation Bureau of the Research and Special Program Administration.

Issued in Washington, D.C.

BROCK ADAMS,
Secretary of Transportation.

MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES COAST GUARD AND THE MATERIALS TRANSPORTATION BUREAU FOR REGULATION OF WATERFRONT LIQUEFIED NATURAL GAS FACILITIES

I. INTRODUCTION

Within the Department of Transportation (DOT), the United States Coast Guard (USCG) and the Materials Transportation Bureau (MTB) exercise separate and overlapping safety regulatory authority affecting the siting, design, construction, maintenance, and operation of waterfront liquefied natural gas (LNG) facilities adjoining the navigable waters of the United States. The USCG derives its authority over such facilities from the Ports and Waterways Safety Act of 1972 (Pub. L. 92-340, 33 U.S.C. 1221-1227) and the Magnuson Act (50 U.S.C. 191). The regulatory authority of the MTB over these same facilities (as well as nonwaterfront LNG facilities) is derived from the Natural Gas Pipeline Safety Act of 1968 (Pub. L. 90—481, 49 U.S.C. 1671 et seq.) and the Hazardous Materials Transportation Act (Pub. L. 93-633, 49 U.S.C. 1801 et seq.).

In recognition of each of the parties' respective regulatory responsibilities, the USCG and the MTB agree that a memorandum of understanding is needed to avoid duplication of regulatory efforts regarding waterfront LNG facilities and to maximize the exchange of relevant information.

II. RESPONSIBILITIES OF THE PARTIES

For the foregoing reasons, the USCG and the MTB agree to the following division of regulatory responsibilities with respect to waterfront LNG facilities and cooperation in carrying out those responsibilities.

USCG RESPONSIBILITIES

The USCG is responsible for establishing regulatory requirements for—

(1) Facility site selection as it relates to management of vessel traffic in and around a facility;

(2) Fire prevention and fire protection equipment, systems, and methods for use at a facility;

(3) Security of a facility; and

(4) All other matters pertaining to the facility between the vessel and the last manifold (or value) immediately before the receiving tank(s).

MTB RESPONSIBILITIES

The MTB is responsible for establishing regulatory requirements for—

(1) Facility site selection except as provided by paragraphs (1) of the "USCG responsibilities" set forth in this memorandum; and

(2) All other matters pertaining to the facility beyond (and including) the last manifold (or valve) immediately before the receiving tank(s) except as provided by paragraphs (2) and (3) of the "USCG responsibilities" set forth in this memorandum.

JOINT RESPONSIBILITIES

(1) The USCG and the MTB will cooperate and assist each other in carrying out their respective waterfront LNG facility regulatory enforcement activities; and

(2) the USCG and the MTB, in an effort to avoid inconsistent regulation of similar safety matters (including as between waterfront and non-waterfront LNG facilities), will consult with each other before issuing each advance notice of proposed rulemaking, and final regulation affecting waterfront LNG facilities.

Date: February 7, 1978.

For the United States Coast Guard.

ADM. OWEN W. SILER,
Commandant.

Date: February 1, 1978.

For the Materials Transportation Bureau.

L. D. SANTMAN,
Acting Director.

[FR Doc. 78-19322 Filed 7-13-78; 8:45 am]

[4810-22]

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 78-232; 055563]

AMERICAN MANUFACTURER'S PETITION

Notice of Receipt of an American Manufacturer's Petition to Withdraw Duty-Free Treatment Under the Generalized System of Preferences for Disposable Butane Lighters Imported From Hong Kong

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of receipt of American manufacturer's petition.

SUMMARY: The Customs Service has received a petition from an American manufacturer of disposable butane lighters requesting that similar products not be granted duty-free entry under the Generalized System of Preferences (GSP) when imported from Hong Kong. The petitioner does not believe that the product meets the requirements set forth in the law for duty-free treatment under the GSP.

DATES: Interested persons may comment on this petition, and comments must be received on or before August 14, 1978.

ADDRESS: Comments may be addressed to the Commissioner of Customs, Attention: Regulations and Legal Publications Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

William E. Brooks, Special Projects and Programs Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D. C. 20229, 202-566-5786.

SUPPLEMENTAL INFORMATION:

BACKGROUND

A petition has been filed under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516), by an American manufacturer of disposable butane lighters. The petitioner requests that similar products, currently classifiable under item 756.04 of the Tariff Schedules of the United States, not be granted free entry under the Generalized System of Preferences (GSP) when imported from Hong Kong. The petitioner believes that the product fails to meet the "value-added" requirement to qualify for free entry under GSP.

Under section 503 of the Trade Act of 1974 (19 U.S.C. 2463), in order for an article to qualify for duty-free entry under the Generalized System of Preferences, 35 percent of the final appraised value of the merchandise must consist of either direct costs of processing operations performed in the beneficiary developing country or of materials produced in the beneficiary developing country. The petitioner describes the manufacturing process for the lighters in question and submits that to the best of their knowledge and belief the parts and subassemblies are imported from Japan. Petitioner submits estimates of the costs of the components and the assembly operation based upon its experience in the manufacture of disposable lighters. Petitioner contends that since the cost or value of the parts and subassemblies imported from Japan may not be included as part of the value-added requirement, and that the direct costs of the processing operation do not constitute 35 percent of the value of the finished article, these lighters do not qualify for duty-free treatment under GSP.

This notice is being published in accordance with § 175.21(a) of the Customs Regulations (19 CFR 175.21(a)).

COMMENTS

Pursuant to § 175.21(b) of the Customs Regulations (19 CFR 175.21(b)), the Customs Service invites written comments on this petition from all interested parties.

The American manufacturer's petition, as well as all comments received in response to this notice will be available for public inspection in accordance with § 103.8(b) and 175.21(a) of the Customs Regulation (19 CFR 103.8(b), 175.21(a)) during regular business hours at the Regulations and legal Publications Division, Headquarters, Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

AUTHORITY

This notice is being published in accordane with § 175.21(a) of the Customs Regulations (19 CFR 175.21(a)).

LEONARD LEHMAN
Assistant Commissioner, Regulations and Rulings.

[FR Doc. 78-19458 Filed 7-13-78; 8:45 am]

[4510-29]
[4830-01]

Internal Revenue Service

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 78-9]

PROHIBITIONS RESPECTING A TRANSACTION INVOLVING THE PENSION PLAN AND TRUST OF ENDODONTIC ASSOCIATES, P.A.

Grant of exemption

AGENCIES: Department of the Treasury/Internal Revenue Service, Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption enables the Pension Trust of Endodontic Associates, P.A. (the Trust) to sell certain Trust assets to Dr. William N. Gressette, an officer and stockholder of Endodontic Associates (the Employer) and sole trustee of the Trust.

FOR FURTHER INFORMATION CONTACT:

Timothy Smith of the Prohibited Transactions Staff of the Employee Plans Division, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 Attention: E:EP:PT:1, 202-566-6761. This is not a toll free number.

SUPPLEMENTARY INFORMATION: On April 18, 1978, notice was published in the FEDERAL REGISTER (43 FR 16437) of the pendency before the Internal Revenue Service and the Department of Labor (the agencies) of an exemption from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code and from the provisions of section 406(a)(1), 406(b)(1) and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the act), for a transaction described in an application submitted by the trustee of the Trust. The notice set forth a summary of the facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the agencies in Washington D.C. The notice also invited interested persons to submit comments on the requested exemption to the Internal Revenue Service (the Service). In addition, the notice stated that any interested person might submit a written request that a hearing be held relating to this exemption. No public comments and no requests for a hearing were received by the Service.

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 4975(c)(2) of the Code and section 408(a) of the act does not relieve a fiduciary or party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Code and the act. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with subsection (a)(1)(B) of section 404 of the act, nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the empployees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 4975(c)(1)(F) of the Code and section 406(b)(3) of the act.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Code and the act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) This document does not meet the criteria for significant regulations set forth in paragraph 8 of the proposed Treasury directive appearing in the FEDERAL REGISTER for Wednesday, May 24, 1978 (43 FR 22319).

EXEMPTION

In accordance with section 4975(c)(2) of the Code and section 408(a) of the Act and the procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722, and ERISA Proc. 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Agencies make the following determinations: (a) The exemption is administratively feasible; (b) it is in the interests of the Plan and of the Participants and beneficiaries; and (c) it is protective of the rights of participants and beneficiaries of the Plan.

Accordingly, the following exemption is hereby granted under the authority of section 4975(c)(2) of the Code and section 408(a) of the act and in accordance with the procedures set forth in Rev. Proc. 75-26 and ERISA Proc. 75-1.

The taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (E) of the Code and the restrictions of section 406(a)(1), 406(b)(1) and 406(b)(2) of the act shall not apply to a transaction involving the sale of approximately 3.18 acres of land on Howard Drive, Greenville, S.C., by the Trust to Dr. Gressett, for $8,000 cash, provided that this amount is not less than the fair market value of the property.

The availability of this exemption is subject to the express conditions that the material facts and representations contained in the application are true and complete and that the application accurately describes all material terms of the transaction consummated pursuant to the exemption.

Signed at Washington, D.C. this 10th day of July, 1978.

IAN D. LANOFF,
Administrator for Pension and Welfare Benefit Programs, Labor-Management Services Administration U.S. Department of Labor.

FRED J. OCHS,
Director, Employee Plans Division, Internal Revenue Service.

[FR Doc. 78-19425 Filed 7-13-78; 8:45 am]

[7035-01]

INTERSTATE COMMERCE COMMISSION

[Notice No. 677]

ASSIGNMENT OF HEARINGS

JULY 11, 1978.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 119789 (Subs-409 and 411), Caravan Refrigerated Cargo, Inc., are now assigned for hearing September 11, 1978, (1 day), at Omaha, NE, at a location to be later designated.

MC 100449 (Sub-86), Mallinger Truck Line, Inc., is now assigned for hearing September 12, 1978 (1 day) at Omaha, NE, at a location to be later designated.

MC 11592 (Sub-19), Best Refrigerated Express, Inc., is now assigned for hearing September 13, 1978 (1 day) at Omaha, NE, at a location to be later designated.

MC 138328 (Sub-42), Clarence L. Werner d.b.a. Werner Enterprises, is now assigned for hearing September 14, 1978 (1 day), at

Omaha, NE, at a location to be later designated.

MC 141054 (Sub-4), B & B Packing Transport, Ltd., is now assigned for hearing September 15, 1978 (1 day), at Omaha, NE, at a location to be later designated.

MC 57697 (Sub-15), Lester Smith Trucking, Inc., application is dismissed.

MC 71536 (Sub-13F), Arrow Carrier Corp., application is dismissed.

MC-F-13458, Holland Motor Express, Inc.—Purchase (portion)—Navajo Freight Lines, Inc., and MC 76032 (Sub-331), Navajo Freight Lines, Inc., now assigned July 19, 1978, at Chicago, IL, is canceled and transfered to Modified Procedure.

MC 111231 (Sub-227), Jones Truck Lines, Inc., now being assigned September 11, 1978 (5 days) at Little Rock, AR, in a hearing room to be later designated.

NANCY L. WILSON,
Acting Secretary.

[FR Doc. 78-19495 Filed 7-13-78; 8:45 am]

[7035-01]

EXCEPTION UNDER SECTION (a), PARAGRAPH (1), PART (v) CORRECTED SECOND REVISED SERVICE ORDER NO. 1309

Exception No. 1

Decided June 19, 1978.

To: Consolidated Rail Corporation.

By the Board:

There is a shipment of 105 carloads of military supplies to be transloaded to rail cars from the vessel American Challenger, due to arrive in Earle, NJ., on June 28, 1978. The specifications for the cars required to transport this traffic, prevent the use of most boxcars and make it essential that the Consolidated Rail Corporation commence immediate assembly of these cars.

Order. Pursuant to the authority vested in the Railroad Service Board by section (a)(1)(v) of Corrected Second Revised Service Order No. 1309, the Consolidated Rail Corporation is authorized to assemble and hold a total of one hundred five (105) empty plain boxcars for loading with military supplies received at Earle, NJ., from the vessel American Challenger, regardless of the provisions of section (a)(3)(i) and of section (a)(4)(i).

These cars shall become fully subject to all provisions of Corrected Second Revised Service Order No. 1309 when loading is completed and instructions for forwarding are received from the shipper.

Effective June 19, 1978.

Expires July 15, 1978.

JOEL E. BURNS,
Chairman,
Railroad Service Board.

[FR Doc. 78-19484 Filed 7-13-78; 8:45 am]

[7035-01]

[Notice No. 117]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JULY 12, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

MC 340 (Sub-51TA), filed May 18, 1978. Applicant: QUERNER TRUCK LINES, INC., 1131 Austin Street, San Antonio, TX 78208. Representative: J. L. Querner (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Malt beverages,* from the facilities of Falstaff Brewing Corp., at Galveston, TX, to points in LA; and (2) *Empty containers, cooperage and dunnage,* from points in LA, to facilities of Falstaff Brewing Corp., at Galveston, TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Falstaff Brewing Corp., 3301 Church Street, Galveston, TX 77550. Send protests to: Richard H. Dawkins, District Supervisor, Interstate Commerce Commission, room B-400, Federal Building, 727 East Durango, San Antonio, TX 78206.

MC 13134 (Sub-54), filed May 17, 1978. Applicant: GRANT TRUCKING, INC., P.O. Box 256, Oak Hill, OH 45656. Representative: James M. Bursch, 100 East Broad Street, Columbus, OH. 43215. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Plywood, particleboard, hardboard, gypsumboard, molding and accessories* used in the installation thereof, from the facilities of Weyerhaeuser Co., located at Chesapeake, VA, to points in IN on and north of Interstate-Hwy 70, PA on and west of State Hwy 209, and OH and WV, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Gordon T. Adams, General Transportation Manager, 201 Dexter Street West, Chesapeake, VA 23324. Send protests to: Frances A. Ciccarello, Secretary, Interstate Commerce Commission, 3108 Federal Office Building, 500 Quarrier Street, Charleston, WV 25301.

MC 52704 (Sub-170TA), filed May 16, 1978. Applicant: GLENN MCCLENDON TRUCKING CO., INC., P.O. Drawer "H", Opelika Highway, Lafayette, AL 36862. Representative: Archie B. Culbreth, 2200 Century Parkway, Suite 202, Atlanta, GA 30345. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Glass containers,* from Okmulgee, OK, to points in TX and to points in that part of AR on and north of a line beginning at the OK-AR State line, then along U.S. Hwy 64 to Conway, AR, then along U.S. Hwy 65 to Little Rock, AR, then along U.S. Hwy 70 to the AR-TN State line, for 180 days. Supporting shipper: Ball Corp., 345 South High Street, Muncie, IN 47302. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, room 1616, 2121 Building, Birmingham, AL 35203.

MC 94350 (Sub-409TA), filed May 18, 1978. Applicant: TRANSIT HOMES, INC., P.O. Box 1628, Haywood Road at Transit Drive, Greenville, SC 29602. Representative: Mirchell King, Jr., P.O. Box 1628, Greenville, SC 29602. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Trailers,* designed to be drawn by passenger automobiles (except travel trailers and camper trailers, in initial movements, from Loveland, CO, to points in NM, MT, and WY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Continental Mfg. Co., Inc., 999 Van Buren, Loveland, CO

80537. Send protests to: E. E. Strotheid, District Supervisor, Interstate Commerce Commission, room 302, 1400 Bldg., 1400 Pickens Street, Columbia, SC 29201.

MC 96813 (Sub-2TA), filed May 18, 1978. Applicant: FISK TRUCKING & TRANSFER CO., 716 San Fernando Road, Los Angeles, CA 90065. Representative: John T. Wirth, 2310 Colorado State Bank Bldg., 1600 Broadway, Denver, CO 80202. Authority sought to operate as a *common carier*, by motor vehicle, over irregular routes, transporting: *Marble and tile*, from the Los Angeles commercial zone to points in the following commercial zones: Phoenix and Tucson, AZ; Denver and Longmont, CO; Omaha and Lincoln, NE; Las Vegas, NV; Portland, OR; Salt Lake City, UT; and Seattle, WA. Restriction: Restricted to traffic originating at the facilities of Walker & Zanger (West Coast) Ltd., and Globe Marble & Tile, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Globe Marble & Tile, Inc., 7448 Bel Air Avenue, North Hollywood, CA; (2) Walker & Zanger (West Coast) Ltd., 1832 South Brand Blvd., Glendale, CA 91204. Send protests to: Irene Carlos, transportation Assistant, Interstate Commerce Commission, room 1321, Federal Bldg., 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 106401 (Sub-47TA). filed May 17, 1978. Applicant: JOHNSON MOTOR LINES, INC., P.O. Box 10877, Charlotte, NC 28201. Representative: Thomas G. Sloan, P.O. Box 10877, Charlotte, NC 28234. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as described by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of National Preston Industries at Canton, MS, as an off-route point in connection with existing regular routes restricted to traffic moving to, from, or through Atlanta, GA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: National Presto Industries, Inc., 3925 Hastings Way, Eau Claire, WI 54701. Send protests to: Terrell Price, District Supervisor, 800 Briar Creek Road, room CC516, Mart Office Bldg., Charlotte, NC 28205.

MC 106644 (Sub-261TA) filed May 10, 1978. Applicant: SUPERIOR TRUCKING COMPANY, INC., 2770 Peyton Road, P.O. Box 916, Atlanta, GA 30301. Representative: Wilford Rohling, P.O. Box 916, Atlanta, GA 30301. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1)(a) *Commodities* which, because of size, weight or shape, require the use of special equipment or special handling; and (b) *attachments, parts, machinery, materials, and supplies* related to the commodities named in Part (1)(a) and moving in connection therewith. (2) *Self-propelled articles*, each weight 15,000 pounds or more, and related machinery, tools, parts, and supplies moving in connection therewith. (3) *Commodities* which, because of size, weight or shape, do not require the use of special equipment or special handling when transported as part of the same shipment with either (a) commodities which because of size, weight, or shape require the use of special equipment or special handling, or (b) self-propelled articles each weighing 15,000 pounds or more. (4) *Machinery or machines or parts thereof*, between points in CT, DE, and DC, on the one hand, and on the other, points in AL, AR, FL, GA, KS, KY, LA, MS, MO, NC, OK, SC, TN, VA, WV, and TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: There are approximately 11 statements of support attached to this application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Sara K. Davis, Transportation Assistant, Interstate Commerce Commission, 1252 West Peachtree St., NW., Room 300, Atlanta, GA 30309.

MC 111302 (Sub-127TA), filed May 17, 1978. Applicant: HIGHWAY TRANSPORT, INC., P.O. Box 10470, Knoxville, TN 37919. Representative: David A. Petersen, P.O. Box 10470, Knoxville, TN 37919. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Gasoline* (in bulk, in tank vehicles), from Nashville, TN, to the facilities of Consumers Gasoline Co. and Murphy Oil Co. in bowling Green, Central City, Glasgow, Hopkinsville, Russellville, Oak Grove, Scottsville, and Thompkinsville, KY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: (1) Consumers Gasoline Co., 610 Magazine Street, Nashville, TN. (2) Murphy Oil Co., P.O. Box 7633, Nashville, TN 37201. Send protests to: Glenda Kuss, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Suite A-422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 113651 (Sub-274TA) filed May 18, 1978. Applicant: INDIANA REFRIGERATOR LINES, INC., P.O. Box 522, Riggin Road, Muncie, IN 47305. Representative: Paul R. Bergant, Sullivan & Associates, Ltd., 10 S. LaSalle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Candy and confectionery items* (except commodities in bulk), and advertising and display materials in vehicles equipped with mechanical refrigeration, from the plantsite and warehouse facilities of Leaf Confectionery, Inc., at or near Chicago, IL, to points in AL, AR, FL, GA, LA, MS, and TN, restricted to traffic originating at the above-named facility, for 180 days. Supporting shipper: Leaf Confectionery, Inc., 1155 North Cicero Avenue, Chicago, IL 60651. Send Protests to: J. H. Gray, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 343 West Wayne Street, Suite 113, Fort Wayne, IN 46802.

MC 117765 (Sub-239TA) filed May 19, 1978. Applicant: HAHN TRUCK LINE, INC., 1100 S. MacArthur, P.O. Box 75218, Oklahoma City, OK 73147. Representative: R. E. Hagan, 1100 S. MacArthur, Oklahoma City, OK 73147. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, in containers, from New Ulm, MN; Cincinnati, OH; and Monroe, WI, to OK, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: (1) Hirst Imports, Inc., 1140 NW., 4th Oklahoma City, OK 73106. (2) Lee Distributing Co., P.O. Box 383, Ardmore, OK 73401. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Court House Building, 215 N.W., 3d, Oklahoma City, OK 73102.

MC 120427 (Sub-16TA) filed May 18, 1978. Applicant: WILLIAMS TRANSFER, INC., P.O. Box 488, 2128 E. Highway 30, Grand Island, NE 68801. Representative: John K. Walker, (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Grain storage, drying and handling equipment, iron and steel articles, and items* used in the production and manufacture of grain storage, drying and handling equipment, between points in the State of IL, on the one hand, and, on the other, points in NE, KS, OK, TX, SD, MN, MO, AR, LA, MS, and TN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: John Aldag, Vice President, Blackhawk Systems, Inc., 1132 West Blackhawk Street, Chicago, IL 60622. Send protests to: Max H. Johnston, District Supervisor, 285 Federal Building and Court House, 100 Centennial Mall North, Lincoln, NE 68508.

MC 121060 (Sub-64TA), filed May 15, 1978. Applicant: ARROW TRUCK

LINES, INC., P.O. Box 1416, 1220 West 3d Street, Birmingham, AL 35207. Representative: William P. Jackson, Jr., P.O. Box 1240, Arlington, VA 22210. Authority sought to operate as a *common carrier*, by motor vechicle, over irregular routes, transporting: (1) *Iron and steel articles*, (a) Between Greenville, MS, on the one hand, and, on the other, points in TX, OK, AR, LA, TN, AL, GA, NC, SC, KY, IL, FL; and (b) Between Peoria, IL, on the one hand, and, on the other, points in LA, TX, and AR; and (2) *Materials, equipment and supplies* used in the manufacture, distribution and installation of the commodities in (1) above, (except in bulk), (a) from the states in (1)(a) above to Greenville, MS; and (b) from AL, TN, MO, and MS, to Peoria, IL, for 180 days. Supporting shipper: Keystone Consolidated Industries, Steel and Wire Group, 700 South Adams Street, Peoria, IL 61641. Send protests to: Mabel E. Holston Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Building, Birmingham, AL 35203.

MC 124211 (Sub-330TA), filed May 18, 1978. Applicant: HILT TRUCK LINE, INC., P.O. Box 988 DTS, Omaha, NE 68101. Representative: Thomas L. Hilt (same address as applicant). Authority sought to operate as a *common carrier*, by motor vechicle, over irregular routes, transporting: *Plastic materials, flakes, granules, pellets and powder*, (except in bulk), from Ringwood, IL, to points in CA, for 180 days. Supporting shipper: Morton Chemical Co., A Division of Morton-Norwich Products, Inc., J. L. Callaghan Traffic Manager, 110 North Wacker Drive, Chicago, IL 60606. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 124896 (Sub-56TA), filed May 17, 1978. Applicant: WILLIAMSON TRUCK LINES, INC., Thorne and Ralston Streets, P.O. Box 3485, Wilson, NC 27893. Representative: Jack H. Blanshan, 205 West Touhy Avenue, Suite 200, Park Ridge, IL 60068. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper, paper articles, and polyethylene articles*, from the plantsite and storage facilities of Jemco Packaging Products Co., at Jackson, TN, to points in NC, SC, GA, FL, VA, MD, PA, NJ, NY, DE, WV, and DC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Jemco Packaging Products Co., Bonwood Industrial Center, Jackson, TN 38301. Send protests to: Archie W. Andrews, District Supervisor, Interstate Commerce Commission, 624 Federal Building, 310 New Bern Avenue, P.O. Box 26896, Raleigh, NC 27611.

MC 133959 (Sub-8TA), filed May 11, 1978. Applicant: LEWIS AND MELVIN ALBAUGH d.b.a. ALBAUGH TRUCK LINE, 123 Main Street, P.O. Box 85, Elkhart, IA 50073. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Trailers* from Lee County, IA to points in AR, CO, IN, IL, KS, KY, LA, MN, MO, NE, OK, TN, TX, WI, and SD, under a continuing contract or contracts with Fruehauf Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Fruehauf Corp., P.O. Box 238, Detroit, MI 48232. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 134082 (Sub-12TA), filed May 12, 1978. Applicant: K. H. TRANSPORT, INC., 4796 Linthicum Road, Dayton, MD 21036. Representative: Chester A. Zyblut, Esq., 130 15th Street NW., Washington, DC 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Oleomargarine and table sauces*, in vehicles equipped with mechanical refrigeration, from the facilities owned and/or utilized by J. H. Filbert, Inc., in Baltimore, MD and Anne Arundel, Baltimore, Howard, and Prince Georges Counties, MD, to points in CO, DE, IL, IN, KY, ME, MA, MI, MO, NH, NJ, NY, OH, PA, RI, VT, VA, WV, DC, and WI, for 180 days. Supporting shipper: Michael R. Hall, Traffic Supervisor, J. H. Filbert, Inc., 3701 Southwestern Boulevard, Baltimore, MD 21229. Send protests to: William L. Hughes, District Supervisor, Interstate Commerce Commission, 814-B Federal Building, Baltimore, MD 21201.

MC 135895 (Sub-20TA), filed May 12, 1978. Applicant: B & R DRAYAGE, INC., P.O. Box 8534, Battlefield Station, Jackson, MS 39204. Representative: Douglas C. Wynn, P.O. Box 1295, Greenville, MS 38701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers, closures and returned shipments of glass containers and closures* between the facilities of Chattanooga Glass Co. at or near Corsicana, TX, on the one hand, and, on the other, points in AR, LA, MS, TN, and OK, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Chattanooga Glass Co., 400 West 45th Street, Chattanooga, TN 37410. Send protests to: Alan C. Tarrant, District Supervisor, Interstate Commerce Commission, Room 212, 145 East Amite Building, Jackson, MS 39201.

MC 136553 (Sub-61TA), filed May 11, 1978. Applicant: ART PAPE TRANSFER, INC., 1080 East 12th Street, Dubuque, IA 52001. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid fertilizer* from the facilities of N-Ren Corp. at or near East Dubuque, IL to IA, MN, and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: N-Ren Corp., P.O. Box D, East Dubuque, IL 61025. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 136817 (Sub-7TA), filed May 11, 1978. Applicant: HUNTER BROKERAGE, INC., 805 32d Avenue, Council Bluffs, IA 51501. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber* (1) from Collinwood and Cookeville, TN and Little Rock, Searcy, and Hope, AR and points in their commercial zones, to Lincoln, NE, and (2) from Palmyra, MO, and its commercial zone, to Tuscaloosa, AL; Barbourville, KY; and Chicago and Glenview, IL; and points in their commercial zones, for 180 days. Restriction: Restricted to a transportation service to be performed under a continuing contract or contracts with McGuffin Lumber, Inc. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: James P. McGuffin, president, McGuffin Lumber, Inc., 3142 Central Street, Evanston, IL 60201. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 No. 14th Street, Omaha, NE 68102.

MC 138308 (Sub-47TA), filed May 11, 1978. Applicant: KLM, INC., 2102 Old Brandon Road, P.O. Box 6098, Jackson, MS 39208. Representative: Fred W. Johnson, Jr., 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture parts* from Meridian, MS, and Shreveport, LA, to Binghamton, NY, restricted to traffic originating at and destined to the facilities of Kroehler Manufacturing Co., for 180 days. Applicant has also filed an underlying ETA seeking up to

90 days of operating authority. Supporting shipper: Kroehler Manufacturing Co., 222 East Fifth Avenue, Naperville, IL 60540. Send protests to: Alan C. Tarrant, District Supervisor, Interstate Commerce Commission, room 212, 145 East Amite Building, Jackson, MS 39201.

MC 138308 (Sub-48TA), filed May 11, 1978. Applicant: KLM, INC., 2102 Old Brandon Road, P.O. Box 6098, Jackson, MS 39208. Representative: Fred W. Johnson, Jr., 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except commodities in bulk) from the facilities of Welch Foods, Inc., at or near Lawton, MI to points in AR, LA, MS, NM, OK, TN, and TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Welch Foods Inc., Two South Portage Street, Westfield, NY 14787. Send protests to: Alan C. Tarrant, District Supervisor, Interstate Commerce Commission, room 212, 145 East Amite Building, Jackson, MS 39201.

MC 138328 (Sub-64TA), filed April 14, 1978. Applicant: CLARENCE L. WERNER, d.b.a. WERNER ENTERPRISES, I-80 and Highway 50, P.O. Box 37308, Omaha, NE 68137. Representative: Donna Ehrlich (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Calcium propionate, sodium propionate, and sodium* diacetate (except commodities in bulk) from Verona, MO, to points in AL (except Birmingham, AL); AZ (except Phoenix, AZ); AR (except Fayetteville and Rogers, AR); CA (except San Francisco and Los Agneles, CA); FL (except Miami, FL); GA (except Atlanta, GA); IL (except Franklin Park, IL); IA (except Sioux City, IA); ME; MA (except Boston, MA); MI (except Detroit, MI); MN (except Minneapolis, MN); New York (except Brooklyn, NY); NC (except Charlotte and Valdese, NC); OH (except Cincinnati and Cleveland, OH); OR; PA (except Philadelphia, Downington, Harrisburgh, and Williamsport, PA); SC; TN (except Memphis, TN); VA; and WA (except Seattle, WA), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Evelyn Higgins, Director of Marketing, Federated Mills, Inc., 110 Dennedy Drive, Smithtown, NY 11787. Send protests to: District Supervisor Carroll Russell, suite 620, Interstate Commerce Commission, 110 North 14th Street, Omaha, NE 68102.

MC 138762 (Sub-21TA), filed May 11, 1978. Applicant: MUNICIPAL TANK LINES LTD., P.O. Box 3500, Calgary, AB, Canada T2P 2P9. Representative: D. S. Vincent (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Polyvinyl chloride resins and compounds*, in bulk, in tank vehicles, between ports of entry on the United States-Canada international boundary line located in NY, on the one hand, and, on the other, Avon Lake, OH, Henry, IL, Pedricktown, NJ and Louisville, KY, restricted to traffic in foreign commerce, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Ronald F. Glover, Equipment and Utilization Analyst, B. F. Goodrich Chemical Co., 6100 Oaktree Boulevard, Cleveland, OH 44131. Send protests to: District Supervisor Paul J. Labane, Interstate Commerce Commission 2602 First Avenue North, Billings, MT 59101.

MC 143027 (Sub-2TA), filed May 12, 1978. Applicant: MICHAEL J. RESUDEK d.b.a. CAPITOL CARTAGE CO., 3521 International Lane, Madison, WI 53704. Representative: Michael S. Varda, 121 S. Pinckney Street, Madison, WI 53701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Battery parts* having a prior movement by air, from Dane County Regional Airport at Madison, WI to the facilities of Ray O Vac, a division of ESB, Inc., at or near Fennimore, WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Ray O Vac, a division of ESB, Inc., 101 E. Washington Avenue, Madison, WI 53703. Send protests to: Ronald A. Morken, Distict Supervisor, Interstate Commerce Commission, 139 W. Wilson Street, room 202, Madison, WI 53702.

MC 144513 (Sub-1TA), filed May 8, 1978. Applicant: CONDOR CONTRACT CARRIERS, INC., 656 Wooster Street, Lodi, OH 44254. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Stereo systems*, from Compton, CA to points in the United States (except AK and HI), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Symphonic Electronic Corp., 1062 East DelAmo Boulevard, Carson, CA 90746. Send protests to: Interstate Commerce Commission, James Johnson, District Supervisor, 731 Federal Office Building, 1240 East Ninth Street, Cleveland, OH 44199.

By the Commission.

NANCY L. WILSON,
Acting Secretary.

[FR Doc. 78-19485 Filed 7-13-78; 8:45 am]

[7035-01]

[Notice No. 78]

MOTOR CARRIER TRANSFER PROCEEDINGS

JULY 14, 1978.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and Transfer Rules, 49 CFR Part 1132:

MC-FC-77727. By application filed June 26, 1978, DeBOER POTATO CO., INC., Glenwood, MN 56334, seeks temporary authority to transfer a portion of the operating rights of Minn-Cal, Inc., P.O. Box E, Mandan, ND 58554, under section 210a(b). The transfer to DeBoer Potato Co., Inc., of a portion of the operating rights of Minn-Cal, Inc., is presently pending.

By the Commission.

NANCY L. WILSON,
Acting Secretary.

[FR Doc. 78-19487 Filed 7-13-78; 8:45 am]

[7035-01]

[Notice No. 79]

MOTOR CARRIER TRANSFER PROCEEDINGS

JULY 14, 1978.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and Transfer Rules, 49 CFR Part 1132:

MC-FC-77728. By application filed June 28, 1978, ASPEN TRANSPORTATION SERVICE, INC., 435 Main Street, Gardner, MA 01440, seeks temporary authority to transfer the operating rights of H. E. Chamberlin Trucking, Inc., 7 Upton Street, Fitchburg, MA 01420, under section 210a(b). The transfer to Aspen Transportation Service, Inc., of the operating rights of H. E. Chamberlin Trucking, Inc., is presently pending.

By the Commission.

NANCY L. WILSON,
Acting Secretary.

[FR Doc. 78-19488 Filed 7-13-78; 8:45 am]

[7035-01]

[Notice No. 80]

MOTOR CARRIER TRANSFER PROCEEDINGS

JULY 14, 1978.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and Transfer Rules, 49 CFR Part 1132:

MC-FC 77729. By application filed June 30, 1978, THREE L CORP., P.O. Box 3, Tama, IA 52339, seeks temporary authority to transfer a portion of

the operating rights of C. E. Hornback, Inc., Second and Siegel, Tama, IA 52339, under section 210a(b). The transfer to Three L Corp., of a portion of the operating rights of C. E. Hornback, Inc., is presently pending.

By the Commission.

NANCY L. WILSON,
Acting Secretary.

[FR Doc. 78-19489 Filed 7-13-78; 8:45 am]

[7035-01]

[Notice No. 81]

MOTOR CARRIER TRANSFER PROCEEDINGS

JULY 14, 1978.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and Transfer Rules, 49 CFR Part 1132:

MC-FC 77740. By application filed June 27, 1978, CANYON DISTRIBUTORS LTD., 5919 5th Street SE., Calgary, AB, Canada, seeks temporary authority to transfer a portion of the operating rights of Herrett Trucking Co., Inc., P.O. Box 1436, Yakima, WA 98907, under section 210a(b). The transfer to Canyon Distributors Ltd., of a portion of the operating rights of Herrett Trucking Co., Inc., is presently pending.

By the Commission.

NANCY L. WILSON,
Acting Secretary.

[FR Doc. 78-19490 Filed 7-13-78; 8:45 am]

[7035-01]

[Notice No. 82]

MOTOR CARRIER TRANSFER PROCEEDINGS

JULY 14, 1978.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and Transfer Rules, 49 CFR Part 1132:

MC-FC 77741. By application filed June 22, 1978, BREMERTON TRANSFER & STORAGE CO., LTD., 221 Bruenn Avenue, Bremerton, WA 98310, seeks temporary authority to transfer the operating rights of Bremerton Transfer & Storage Co., Inc., 221 Bruenn Avenue, Bremerton, WA 98310, under section 210a(b). The transfer to Bremerton Transfer & Storage Co., Ltd., of the operating rights of Bremerton Transfer & Storage Co., Inc., is presently pending.

By the Commission.

NANCY L. WILSON,
Acting Secretary.

[FR Doc. 78-19491 Filed 7-13-78; 8:45 am]

[7035-01]

[Notice No. 83]

MOTOR CARRIER TRANSFER PROCEEDINGS

JULY 14, 1978.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and Transfer Rules, 49 CFR Part 1132:

MC-FC 77742. By application filed June 28, 1978, GENERAL FREIGHTS, INC., P.O. Box 157, Hancock, MD 21750, seeks temporary authority to transfer the operating rights of Hagerstown Motor Express Co., Inc., Route No. 6, Middleburg Pike, Hagerstown, MD 21740, under section 210a(b). The transfer to General Freights, Inc., of the operating rights of Hagerstown Motor Express Co., Inc., is presently pending.

By the Commission.

NANCY L. WILSON,
Acting Secretary.

[FR Doc. 78-19492 Filed 7-13-78; 8:45 am]

[7035-01]

[Notice No. 84]

MOTOR CARRIER TRANSFER PROCEEDINGS

JULY 14, 1978.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and Transfer Rules, 49 CFR Part 1132:

MC—FC 77743. By application filed July 5, 1978, PAUL W. TAYLOR CO., INC., 13 Broadway, Stoneham, MA 02180, seeks temporary authority to transfer the operating rights of J. J. Donovan & Sons, Inc., 35 Swan Street, Medford, MA 02155, under section 210a(b). The transfer to Paul W. Taylor Co., Inc., of the operating rights of J. J. Donovan & Sons, Inc., is presently pending.

By the Commission.

NANCY L. WILSON,
Acting Secretary.

[FR Doc. 78-19493 Filed 7-13-78; 8:45 am]

[7035-01]

[Notice No. 85]

MOTOR CARRIER TRANSFER PROCEEDINGS

JULY 14, 1978.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and Transfer Rules, 49 CFR Part 1132:

MC-FC 77746. By application filed July 6, 1978, LEPRECHAUN TOURS, INC., 51 Grand Avenue, Newburgh, NY 12550, seeks temporary authority to transfer the operating rights of James Jones d.b.a. Jones Travel Agency (Sabra Jones, Executrix), under section 210a(b). The transfer to Leprechaun Tours, Inc., of the operating rights of James Jones d.b.a. Jones Travel Agency (Sabra Jones, Executrix), is presently pending.

By the Commission.

NANCY L. WILSON,
Acting Secretary.

[FR Doc. 78-19494 Filed 7-13-78; 8:45 am]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

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[6320-01]

1

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 10 a.m.—July 12, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

(Addition)—5a. Dockets 32364, 32365, 32568 and 32577; Application of Air New England to amend its certificate to allow it to serve Hartford/Springfield on a subsidy ineligible basis; Application of Air New England for exemption authority to serve Hartford/Springfield effective September 1, 1978, pending decision on Docket 32364; Application of Pilgrim Airlines to use FH-227 or similar aircraft to serve Hartford-New York market; Application of Allegheny to amend its certificate for Route 97 to allow nonstop Burlington-Hartford authority (Memo 8047, BPDA).

(Deletion)—10. Docket 30635, Arizona Service Investigation, (Instructions).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, The Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: The staff recommended that Item 5a be placed on the meeting calendar for July 12. The staff understands that Member Bailey will not be present at the July 20 meeting and feels that this item should be voted on by the full Board. Item 10 is being deleted from the July 12 agenda in order to allow more time to investigate Board precedents in suspension/deletion cases, the New England Service Investigation, the Air Midwest proceeding, and other Board actions that bear on the issues presented in the Arizona case. Accordingly, the following Members have voted that agency business requires the addition of Item 5a and the deletion of Item 10 from the July 12, 1978 agenda and that no earlier announcement of these changes was possible:

Chairman Alfred E. Kahn
Vice Chairman G. Joseph Minetti
Member Richard J. O'Melia
Member Elizabeth E. Bailey

[S-1454-78 Filed 7-12-78; 3:56 pm]

[6320-01]

2

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 10 a.m.—July 12, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 8a. Docket 30055, *Phoenix-Las Vegas-Reno Competitive Nonstop Service Investigation* (OGC).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, The Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: A motion was filed May 2, 1978 which should have been considered at the meeting of July 7, 1978, when the Board acted on all other petitions and motions in the Phoenix-Las Vegas-Reno Case, Docket 30055. Because an opinion and order are to be issued July 14, the Board must now consider this motion which may warrant changes in the opinion or order, at the earliest possible date. No earlier notice was possible. Accordingly, the following Members have voted that agency business requires the addition of Item 8a to the July 12, 1978 agenda and that no earlier announcement of this addition was possible:

Chairman Alfred E. Kahn
Vice Chairman G. Joseph Minetti
Member Richard J. O'Melia
Member Elizabeth E. Bailey

[S-1455 Filed 7-12-78; 3:56 pm]

[6320-01]

3

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 10 a.m.—July 12, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

1. Option Paper on "Boiler-Plate" language in standard route cases (BPDA, OGC, ALJ, BIA).
2. Dockets 32129, 32286, 32303 and 32309; Motion of Pacific Southwest for expedited hearing of its nonstop California-Arizona low-fare application and motions to consolidate of Hughes Airwest, Western and Trans World (BPDA, OGC, ALJ).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, The Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: Because of additional time needed to coordinate on the staff level on the Option Paper on "Boiler-Plate" language in standard route cases (Item 1), the staff is requesting that it be deleted from the July 12, 1978, agenda and be added to the July 20, 1978, agenda. Also, motion of Pacific Southwest for expedited hearing of its nonstop California-Arizona Low-fare application and motions to consolidate of Hughes Airwest, Western and Trans World (Item 2) is related to Item 1 and should therefore be deleted from the July 12, 1978, agenda and added to the July 20, 1978, agenda. Accordingly, the following Members have voted that agency business requires the deletion of items 1 and 2 from the July 12, 1978 agenda and that no earlier announcement of these deletions was possible;

Chairman Alred E. Kahn
Vice Chairman G. Jospeh Minetti
Member Richard J. O'Melia
Member Elizabeth E. Bailey

[S-1456-78 Filed 7-12-78; 3:56 pm]

[6351-01]

4

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m.—July 18, 1978.

PLACE: Fifth floor conference room, 2033 K Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Proposed Reporting System for Dealer Options.

Review of the Proposed Rules on Commodity Pool Operators and Commodity Trading Advisors.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-1439-78 Filed 7-12-78; 9:07 am]

[6351-01]

5

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., July 19, 1978.

PLACE: Eighth floor conference room, 2033 K Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Judicial matters.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-1440-78 Filed 7-12-78; 9:07 am]

[6351-01]

6

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m.—July 21, 1978.

PLACE: 8th Floor Conference Room, 2033 K Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market surveillance matters.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-1441-78 Filed 7-12-78; 9:07 am]

[6740-02]

7

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Published July 7, 1978—43 FR 29408.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m.—July 12, 1978.

CHANGE IN THE MEETING: The following items have been added:

Item No., Docket No., and Company

CAM-3—DOE's Proposed Regulations Regarding Ex Parte Communications Applicable to the ERA's Natural Gas and Electricity Import and Export Proceedings (10 CFR Part 205).

CP-4—Town of Bude, Miss., and town of Flora, Miss.

KENNETH F. PLUMB,
Secretary.

[S-1450-78 Filed 7-12-78; 3:42 pm]

[6740-02]

8

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: July 12, 1978; at the conclusion of the regular meeting.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pending civil litigation.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth F. Plumb, telephone 202-275-4166.

[S-1451-78 Filed 7-12-78; 3:42 pm]

[6720-01

9

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 9:30 a.m., July 20, 1978.

PLACE: 1700 G Street NW., Sixth Floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION:

Franklin O. Bolling, 202-377-6677.

MATTERS TO BE CONSIDERED:

Bank Membership Application—Claremont Savings Bank, Claremont, N.H.

Merger of Tracy Savings & Loan Association, Tracy, Minn., into Pipestone Federal Savings & Loan Association, Pipestone, Minn.

Branch Office Application—Skokie Federal Savings & Loan Association, Skokie, Ill.

Agency Office Application—Great Northwest Federal Savings & Loan Association, Bremerion, Wash.

Merger and Maintenance of Branch Offices—Arthur Homestead & Loan Association, Arthur, Ill., into Champaign Loan & Building Association, Champaign, Ill.

Consideration of Republication of Systems pursuant to Privacy Act of 1974.

Authority to Incur Debt—Hinton Mortgage & Investment Co., Dallas, Tex.

No. 164, July 12, 1978.

[S-1452 Filed 7-12-78; 3:42 pm]

[6730-01]

10

FEDERAL MARITIME COMMISSION.

TIME AND DATE: July 20, 1978—10 a.m.

PLACE: Room 12126—1100 L Street NW., Washington, D.C. 20573.

STATUS: Part of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion open to the public:

1. Rules of Practice and Procedure—Amendments regarding review of decisions.

Portions closed to the public:

1. Dockets No. 73-72—Agreement No. 10056—Pooling, Sailing and Equal Access Cargo Agreement—Consideration of petition of Prudential Lines, Inc., for reconsideration of Commission's decision.
2. Docket No. 77-5—Agreement No. 9973-3—Johnson ScanStar Combined Service (JSS)—Consideration of record.

CONTACT PERSON FOR MORE INFORMATION:

Francis C. Hurney, Secretary, 202-523-5725.

[S-1446-78 Filed 7-12-78; 10:27 am]

[6210-01]

11

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS.

TIME AND DATE: 10:00 a.m., Wednesday, July 19, 1978.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed statement to be presented to the House Committee on Small Business regarding H.R.12666, a bill to amend the Small Business Investment Act of 1958.
2. Proposed statement to be presented to the Subcommittee on Financial Institutions Supervision, Regulation, and Insurance of the House Committee on Banking, Finance, and Urban Affairs regarding the Communnity Reinvestment Act, the Home Mortgage Disclosure Act, and related legislation.
3. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board: 202-452-3204.

GRIFFITH L. GARWOOD
Deputy Secretary of the Board.

[S-1448 Filed 7-12-78; 11:48 a.m.]

[6750-01]

12

FEDERAL TRADE COMMISSION.

TIME AND DATE: 10 a.m.—Tuesday, July 18, 1978.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Nonadjudicative Matters

(1) Approval of Minutes on Nonadjudicative Matters Considered at Meetings of May 26, and June 27, 1978.
(2) Consideration of proposed consent agreement in Ford Motor Co., et al., Docket No. 9073.
(3) Consideration of injuction action against Century 21 Commodore Plaza, Inc. (Docket No. 9088).
(4) Consideration of proposed complaints in three nonpublic part II matters.
(5) Consideration of initiation of civil penalty action under 15 U.S.C. 45m(1)(B) and action for consumer redress under 15 U.S.C. 57b in a nonpublic part II matter.
(6) Consideration of a proposed complaint in a (nonpublic) part II matter.
(7) Consideration of issuance of proposed complaints in two (nonpublic) part II matters.

Adjudicative Matters Under Part 3 of the Rules of Practice

Approval of Minutes on Adjudicative Matters Considered at Meeting of June 27, 1978.

CONTACT PERSON FOR MORE INFORMATION:

Wilbur T. Weaver, Office of Public Information, 202-523-3830; Recorded message: 202-523-3806.

[S-1449-78 Filed 7-12-78; 11:48 am]

[7035-01]

13

INTERSTATE COMMERCE COMMISSION.

TIME AND DATE: 9:30 a.m., Tuesday, July 18, 1978.

PLACE: Room 4225, Interstate Commerce Commission Building, 12th Street and Constitution Avenue NW., Washington, D.C.

STATUS: Open regular conference.

MATTER TO BE CONSIDERED:

1. Residual Employment Rights of ICC Personnel—Discussion.

CONTACT PERSON FOR MORE INFORMATION:

Douglas Baldwin, Director Office of Communications, telephone 202-275-7252.

The Commission's professional staff will be available to brief news media representatives on conference issues at the conclusion of the meeting.

[S-1438-78 Filed 7-12-78; 9:02 am]

[4910-58]

14

NATIONAL TRANSPORTATION SAFETY BOARD.

TIME AND DATE: 9 a.m., Thursday, July 20, 1978 [NM-78-29].

PLACE: NTSB Board Room, National Transportation Safety Board, 800 Independence Avenue, SW., Washington, D.C. 20594.

STATUS: The first five items will be open to the public; the sixth item will be closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. *Aircraft Accident Report*—National Jet Services, Inc., Douglas DC-3, N51071, Evansville Dress International Airport, Ind., December 13, 1977.
2. *Railroad Accident Report*—Louisville & Nashville Railroad Co. freight train derailment and puncture of anhydrous ammonia tank cars at Pensacola, Fla., November 9, 1977.
3. *Discussion* of simultaneous takeoffs and landings on runways, adjacent turf areas, and intersecting runways.
4. *Letter* to the Lake Carriers Association regarding reconsideration of probable cause, SS *Edmund Fitzgerald.*
5. *Request for Approval* to hold a public hearing in the near collision incident between a Cessna 500 Citation and a North Central Airlines DC-9 at LaGuardia Airport, New York, on June 21, 1978.
6. *Opinion and Order*—Petition of Warlick, Docket SM-1988; disposition of Administrator's appeal.

CONTACT PERSON FOR MORE INFORMATION:

Sharon Fleming, 202-472-6022.

[S-1453-78 Filed 7-12-78; 3:42 pm]

[7590-01]

15

NUCLEAR REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 28896.

TIME AND DATE: July 6, 1978 (Changes).

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Closed.

1. The meeting entitled "Discussion of OIA/OGC Inquiry in Testimony of the Executive Director for Operations" (approx. 2 hrs.) (Closed—Ex. 1.) scheduled for approximately 10:15 a.m. was cancelled.

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

ROGER M. TWEED,
Office of the Secretary.

[S-1443-78 Filed 7-12-78; 10:04 am]

[7590-01]

16

NUCLEAR REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 28896.

TIME AND DATE: July 6, 1978.

PLACE: Chairman's Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Closed (additional item).

MATTERS TO BE CONSIDERED:

1. At approximately 4 p.m. on Thursday, July 6, the Commission held the following meeting: Discussion of Physical Security Assurances on Nuclear Exports (Approx. 1 hr.) (Closed—Ex. 1.)

ADDITIONAL INFORMATION:

By vote of 4-0 on July 7, the Commission determined pursuant to 5 U.S.C. 552b(e)(1) and § 9.107(a) of the Commission's rules that Commission business requires that this agenda item be held on less than one week's notice to the public. Prompt scheduling was required so that the matter could be handled expeditiously.

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

ROGER M. TWEED,
Office of the Secretary.

[S-1444-78 Filed 7-12-78; 10:04 am]

[7590-01]

17

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: July 18, 1978.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Tuesday, July 18—1:30 p.m.

1. Discussion of personnel matter (Approx. 1 hr.) (Closed—Exemption 6.)
2. Discussion of OIA/OGC Inquiry in Testimony of the Executive Director for Operations (Approx. 1 hr.) (Closed—Exemption 1.)

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

ROGER M. TWEED,
Office of the Secretary.

[S-1445-78 Filed 7-12-78; 10:14 am]

[4410-01]

18

PAROLE COMMISSION. National Commissioners (the Commissioners presently maintaining offices at Washington, D.C. headquarters).

TIME AND DATE: Thursday, July 20, 1978; 9:30 a.m.

PLACE: Federal Home Loan Bank Board Building, room 338, 320 First Street NW., Washington, D.C. 20537.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Referrals from Regional Commissioners of approximately 15 cases in which inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION:

Lee H. Chait, analyst, 202-724-9094.

[S-1447-78 Filed 7-12-78; 11:48 am]

federal register

FRIDAY, JULY 14, 1978
PART II



DEPARTMENT OF LABOR

Employment Standards Administration

■

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

[4510-27]

DEPARTMENT OF LABOR

Employment Standards Administration

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

General Wage Determination Decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed in construction activity of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provision for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General Wage Determination Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provsions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

MODIFICATIONS AND SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

Modifications and Supersedeas Decisions to General Wage Determination Decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the Modifications and Supersedeas Decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 267a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretarty of Labor's Orders 13-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing General Wage Determination Decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statues, constitute the mimimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and Supersedeas Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Adminstration, Office of Special Wage Standards, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Wage Determination Decision.

MODIFICATIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being modified and their dates of publication in the FEDERAL REGISTER are listed with each State.

Hawaii:	
HI78-5016	Mar. 17, 1978.
Idaho:	
ID78-5017	Apr. 7, 1978.
Illinois:	
IL77-5038	Apr. 8, 1977.
Nevada:	
NV78-5009	Mar. 10, 1978.
New Jersey:	
NJ78-3047	June 16, 1978.
Oklahoma:	
OK78-4054; OK78-4055; OK78-4056; OK78-4057	June 6, 1978.
OK78-4058; OK78-4059; OK78-4060; OK78-4061; OK78-4062	June 16, 1978.
Pennsylvania:	
PA77-3078	June 4, 1977.
PA78-3012	Apr. 28, 1978.
PA78-3013	Apr. 14, 1978.
PA78-3017	May 5, 1978.
PA78-3044; PA78-3045	May 12, 1978.
Texas:	
TX78-4031; TX78-4040; TX78-4041	Apr. 14, 1978.
West Virginia:	
WV78-3018	June 9, 1978.

SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

The number of the decisions being superseded and their dates of publication in the FEDERAL REGISTER are listed with each State. Supersedeas Decision numbers are in parentheses following the number of the decisions being superseded.

Colorado:	
CO77-5080(CO78-5108); CO77-5081(CO78-5109); CO77-5082(CO78-5110); CO77-5083(CO78-5112); CO77-5084(CO78-5111)	Sept. 23, 1978.
Flordia:	
FL77-1144(FL7&8-1062)	Nov. 25, 1977.
Louisiana:	
LA78-4013(LA78-4072)	Feb. 17, 1978.
Minnesota:	
MN77-2048(MN78-2062)	May 20, 1977.

CANCELLATION OF GENERAL WAGE DETERMINATION DECISIONS

None.

Signed at Washington, D.C., This 7th Day of July 1978.

ROBERT M. BROCK,
Acting Assistant Administrator,
Wage and Hour Division.

DECISION #ID78-5017 - Mod. #7
(43 FR 14841 - April 7, 1978)
Statewide Idaho

Change:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Cement Masons:					
Remaining Counties and Idaho County (south of 46th Parallel):					
Zone 1:					
Cement Masons	$9.67	.84	.55	.80	.15
Power Trowel; Power Grinder; Gunnite and composition floor layer	9.87	.84	.55	.80	.15
Zone 2:					
Cement Masons	10.92	.84	.55	.80	.15
Power trowel; Power grinder; Gunnite and composition floor layer	11.12	.84	.55	.80	.15
Electricians:					
Remaining Counties:					
Electricians; Technicians	11.70	.75	3% + .75		1%
Cable Splicers	12.87	.75	3% + .75		1%
Line Construction Workers:					
Area 2:					
Remaining Counties:					
Lineman	10.72	.45	3% + .35		1/2%
Line Equipment Mechanic:					
Base Shop	9.47	.45	3% + .35		1/2%
Right-of-Way	10.14	.45	3% + .35		1/2%
Line Equipment Serviceman	9.47	.45	3% + .35		1/2%
Line Equipment Operator	9.63	.45	3% + .35		1/2%
Groundman	7.87	.45	3% + .35		1/2%
Cable Splicer	11.83	.45	3% + .35		1/2%

DECISION #HI78-5016 - Mod. #3
(43 FR 11366 - March 17, 1978)
Statewide Hawaii

Change:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers; Stonemasons	$10.78	$1.30	$1.70		.15
Cement Masons:					
Cement Masons	9.63	1.30	1.70	.60	.15
Trowel Machine Operators	9.78	1.30	1.70	.60	.15
Painters:					
Brush	9.35	.79	3.00	.75	.10
Tapers	9.55	.79	3.00	.75	.10
Spray	9.85	.79	3.00	.75	.10
Plasterers	10.02	1.30	2.00	.60	.21

MODIFICATION P. 3

DECISION #ID78-5017 (Cont'd):

Change (Cont'd): Power Equipment Operators: Area 1: Benewah, Bonner, Boundary, Clearwater, Idaho County (north of the 46th Parallel), Kootenai, Latah, Lewis, Nez Perce, Shoshone Counties:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Zone 1:					
Group 1	$9.80	$1.10	$1.30		.03
Group 2	10.10	1.10	1.30		.03
Group 3	10.65	1.10	1.30		.03
Group 4	10.80	1.10	1.30		.03
Group 5	10.95	1.10	1.30		.03
Group 6	11.20	1.10	1.30		.03
Group 7	11.45	1.10	1.30		.03
Zone 2:					
Group 1	10.45	1.10	1.30		.03
Group 2	10.75	1.10	1.30		.03
Group 3	11.30	1.10	1.30		.03
Group 4	11.45	1.10	1.30		.03
Group 5	11.60	1.10	1.30		.03
Group 6	11.85	1.10	1.30		.03
Group 7	12.10	1.10	1.30		.03
Zone 3:					
Group 1	10.70	1.10	1.30		.03
Group 2	11.00	1.10	1.30		.03
Group 3	11.55	1.10	1.30		.03
Group 4	11.70	1.10	1.30		.03
Group 5	11.85	1.10	1.30		.03
Group 6	12.10	1.10	1.30		.03
Group 7	12.35	1.10	1.30		.03

MODIFICATION P. 4

DECISION #ID78-5017 (Cont'd):

Change (Cont'd): Power Equipment Operator: Area 1 (Cont'd): Benewah, Bonner, Boundary, Clearwater, Idaho County (north of the 46th Parallel), Kootenai, Latah, Lewis, Nez Perce, Shoshone Counties (Cont'd):	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Zone 4:					
Group 1	$11.15	$1.10	$1.30		.03
Group 2	11.45	1.10	1.30		.03
Group 3	12.00	1.10	1.30		.03
Group 4	12.15	1.10	1.30		.03
Group 5	12.30	1.10	1.30		.03
Group 6	12.55	1.10	1.30		.03
Group 7	12.80	1.10	1.30		.03
Zone 5:					
Group 1	11.60	1.10	1.30		.03
Group 2	11.90	1.10	1.30		.03
Group 3	12.45	1.10	1.30		.03
Group 4	12.60	1.10	1.30		.03
Group 5	12.75	1.10	1.30		.03
Group 6	13.00	1.10	1.30		.03
Group 7	13.25	1.10	1.30		.03

MODIFICATION P. 6

Decision No. NJ78-3047 - Mod. #1
(43 FR-26235 - June 16, 1978)
Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Monmouth, Ocean and Salem Counties, New Jersey

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Decision No. NJ78-3047 supersedes Decision No. NJ77-3079 rather than Decision No. NJ77-3039, as erroneously noted on Page 26235 of the June 16, 1978 Federal Register.					
Plumbers & Pipefitters:					
Zone 3	$13.09	1.04	.90		.20
Drop:					
Ocean County from Zone 2 for Carpenters, Millwrights, and Insulators					
Add:					
Carpenters, Millwrights, and Insulators:					
Zone 5 - Ocean County					
Carpenters & Insulators	11.70	8%	7%		1/5%
Millwrights	11.95	8%	7%		1/5%

MODIFICATION P. 5

DECISION NO. IL77-5038 - MOD. #5
(42 FR 18802 - April 8, 1977)
Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Dipper and Hydraulic Dredging:					
Chief Engineer	$14.42	.63	.50	a	
Operators	14.31	.63	.50	a	
Assistant Enineer	13.82	.63	.50	a	
Welder	13.71	.63	.50	a	
Cranemen - Dipper Dredging	13.71	.63	.50	a	
Spill Barge Operator - Hydraulic Dredging	13.71	.63	.50	a	

MODIFICATION P. 8

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. (OK78-4054-Mod2 (43 FR 25268 - June 9, 1978 Oklahoma Cleveland, Caddo, Grady, Canadian, Kingfisher, Lincoln, Logan, McClain, Seminole and Pattawatomie Counties, Oklahoma					
CHANGE					
Ironworkers	$10.60	.45	.65		.12
Roofers	9.65	.60	.25		.04
DECISION NO. OK78-4055-Mod#1 (43 FR 25270 - June 9, 1978) Tulsa, Creek, Craig, Ottawa, Delaware, Mayes, and Roger Counties, Oklahoma					
CHANGE					
Ironworkers	10.60	.45	.65		.12
Roofers	9.65	.60	.25		.04
DECISION NO. OK78-4056-Mod#1 (43 FR 25273 - June 9, 1978 Muskogee, Adair, Cherokee and Okmulgee Counties, Oklahoma					
CHANGE					
Ironworkers	10.60	.45	.65		.12
Roofers	9.65	.60	.25		.04
DECISION NO. OK78-4057-Mod#1 (43 FR 25275 - June 9, 1978 Latimer, Le Flore, Haskell, Sequoyah and Pushmataha Counties, Oklahoma					
CHANGE					
Ironworkers	10.60	.45	.65		.12
Roofers	9.65	.60	.25		.04
DECISION NO. OK78-4058-Mod#1 (43 FR 26258 - June 16, 1978 McIntosh County, Oklahoma					
CHANGE					
Ironworkers	10.60	.45	.65		.12
Roofers	9.65	.60	.25		.04

MODIFICATION P. 7

DECISION #NV78-5009 - Mod. #6 (43 FR 10229 - March 10, 1978) Statewide (does not include the Nevada Test Site and Tonopah Test Range, and highway construction in Douglas County), Nevada

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Glaziers:					
Clark, Esmeralda, Lincoln, Nye Counties	$14.17	.65	.40		.05
Plasterers:					
Clark, Lincoln, Nye Counties	12.18	1.00	1.00		.08
Power Equipment Operators:					
Steel Erection:					
Remaining Counties:					
Group 1	10.19	1.98	2.35	1.17	.10
Group 2	10.60	1.98	2.35	1.17	.10
Group 3	11.69	1.98	2.35	1.17	.10
Group 4	11.84	1.98	2.35	1.17	.10
Group 5	12.15	1.98	2.35	1.17	.10
Group 5	12.67	1.98	2.35	1.17	.10
Group 6	13.11	1.98	2.35	1.17	.10
Group 6-A	13.72	1.98	2.35	1.17	.10
Group 6	14.81	1.98	2.35	1.17	.10
Soft Floor Layers:					
Clark, Esmeralda, Lincoln, Nye Counties	13.47	.65			.15

DECISION #PA77-3078 - Mod. #7 (42 FR 32478 - June 4, 1977) Lawrence & Mercer Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Painters:					
Commercial					
Brush & Roller	$10.80	.65	1.00		
Spray	11.80	.65	1.00		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. OK78-4059-Mod#1 (43 FR 26258 - June 16,1978) Wagoner County, Oklahoma					
CHANGE					
Ironworkers	$10.60	.45	.65		.12
Roofers	9.65	.60	.25		.04
DECISION NO. OK78-4060 Mod#1 (43 FR 26263 - June 16,1978) Garfield County, Oklahoma					
CHANGE					
Ironworkers	10.60	.45	.65		.12
Roofers	9.65	.60	.25		.04
Bricklayers-Stonemasons	9.20		.30		
DECISION NO. OK78-4061-Mod#1 (43 FR 26269 - June 16,1978) Comanche County, Oklahoma					
CHANGE					
Ironworkers	10.60	.45	.65		.12
Roofers	9.65	.60	.25		.04
DECISION NO. OK78-4062-Mod#1 (43 FR 26265 - June 16,1978) Pittsburg County, Oklahoma					
CHANGE					
Ironworkers	10.60	.45	.65		.12
Roofers	9.65	.60	.25		.04

MODIFICATION P. 12

DECISION #PA78-3044 - Mod. #2
(43 FR 20711 - May 12, 1978)
Luzerne County, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Carpenters:					
Hazleton, Freeland Black Creek, Butler, Dennison, Foster, Hazle, Hollenback, Nescopeck, Sugarloaf and Lower part of Salem Twps.	$10.30	.50	.55		.05
Millwrights	11.45	.50	.55		.05

DECISION #PA78-3045 - Mod. #2
(43 FR 20714 - May 12, 1978)
Lackawanna, Susquehanna, Wayne, and Wyoming Counties, Pennsylvania

Change:					
Bricklayers & Stonemasons					
Scranton in Lackawanna Co.	$11.00	.85	.90		.01
Carpenters - West of Susquehanna River	11.04	.50	.55		.05
Electricians: - Lackawanna, and Wayne Counties	10.70	.65	3%+.50	.75	.10
Wyoming County - East of Susquehanna River	10.70	.65	3%+.50	.75	.10
Lathers	11.04		.10		.01
Millwrights					
West of Susquehanna River	11.45	.50	.55		.05
Painters:					
Brush & Roller	9.00		1.20		
Spray	10.50		1.20		
Steel	10.00		1.20		
Soft Floor Layers					
Wyoming County	9.20	.50	.55		.05
Lackawanna, Wayne and Susquehanna River	10.67	.64	.50		.05

MODIFICATION P. 11

DECISION #PA78-3012 - Mod. # 4
(43 FR 18476 - April 28, 1978)
Clinton, Centre, Huntingdon, Fulton & Mifflin Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Electricians:					
Zone 2	$10.86	.65	3%+.49		½ of 1%
Zone 3	9.73	.50	3%+.60	.75	.02

DECISION #PA78-3013 - Mod. # 3
(43 FR 16097 - April 14, 1978)
Bedford, Cambria, Cameron, Clarion, Clearfield, Jefferson, Crawford & Venango Counties, Pennsylvania

Change:					
Bricklayers & Stonemasons:					
Zone 3	$12.00	.70	.40		

DECISION #PA78-3017 - Mod. # 3
(43 FR 19574 - May 5, 1978)
Carbon, Monroe County, including Tobyhanna Army Depot, and Pike County, Pennsylvania

Change:					
Carpenters					
Zone 1	$10.30	.50	.55		.05
Zone 2	10.20	.44	.72		
Zone 4	11.04	.50	.55		.05
Electricians					
Zone 3	11.80	7%	3%+1.00		.02
Painters:					
Zone 2					
Brush & Roller	9.00		1.20		
Structural Steel	10.00		1.20		
Spray	10.50		1.20		
Zone 3					
Brush	8.95	1.23	.70		
Spray	9.95	1.23	.70		
Steel	9.95	1.23	.70		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TX78-4031 - Mod. #5					
(43 FR 16116 - April 14, 1978)					
Bell, Bosque, Coryell, Falls, Hill & McLennan Cos., Texas					
Change Mod. #5 in to FR of July 7, 1978 to Reas Mod. #5					
Also Change:					
Building Construction:					
Asbestos workers - Zone 2	$10.43	.40	.76		.03
Cement masons	9.24	.50	.55		
Electricians - Zone 1	9.70	.60	3%		1/4%
Zone 2	11.10		8%		.8%
DECISION #TX78-4040 - Mod. #7					
(43 FR 16131 - April 14, 1978)					
Jefferson & Orange Cos., Texas					
Change:					
Bricklayers & stonemasons	12.46	.63	.50		.04
DECISION #TX78-4041 - Mod. #5					
(43 FR 16133 - April 14, 1978)					
Lubbock County, Texas					
Change:					
Carpenters	9.20	.48	.50		.01
Line construction:					
Linemen	10.35	.60	3%		1/10%
Operators	80%JR	.60	3%		1/10%
Groundman (more than 1 year experience)	55%JR	.60	3%		1/10%
Groundman (less than 1 year experience)	50%JR	.60	3%		1/10%
Flat bed truck driver	70%JR	.60	3%		1/10%

Decision #WV78-3018 - Mod. #1
(43 Fr - 25278 - June 9, 1978)
State of West Virginia excluding the Counties of Berkeley, Jefferson, and Morgan

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Bricklayers, Stone Masons, Marble Masons, Terrazzo Workers, & Tile Layers:					
Area 8					
Bricklayers, Stone Masons, and Marble Masons	$11.53	.50	.25		.02
Tile setters and Terrazzo Workers	7.78	.50	.25		.02
Carpenters & Pile drivermen:					
Area 2					
Carpenters	10.65	.50	.60		.02
Area 4					
Carpenters	11.92	.50	.50		.02
Piledrivermen	12.17	.50	.50		.02
Area 7					
Carpenters	11.37	.50	.50		.02
Piledrivermen	11.62	.50	.50		.02
Area 8					
Carpenters	11.40	.50	.35		.02
Piledrivermen	11.65	.50	.35		.02
Area 9					
Carpenters	11.37	.50	.50		.02
Piledrivermen	11.62	.50	.50		.02
Electricians:					
Barbour, Doddridge, Harrison, Lewis, Randolph, & Upshur Cos.:					
Wiremen	9.65	.50	3%+.52	2.02	.03
Cable splicers	10.615	.50	3%+.52	2.02	.03
Boone, Braxton, Calhoun, Clay, Fayette (Falls & Kanawha Twps.) Gilmer, Kanawha, Putnam, Raleigh, (CLear Forks and Marsh Fork Twps.), Roane, & Webster Counties:					
Wiremen	12.80	.50	3%+.27		.04
Cable splicers	14.08	.50	3%+.27		.04
Jackson, Pleasants, Ritchie, Tyler, Wirt, and Wood Counties:					
Wiremen	10.70	.50	3%+1.27	1.27	.04
Cable splicers	10.95	.50	3%+1.27	1.27	.04
Glaziers:					
Area 4	9.12	.60	.60		.01
Ironworkers: Structural, Ornamental, and Reinforcing:	11.93	.80	.95		.03

MODIFICATION P. 16

DECISION NO. WV78-3018 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Add:					
Nicholas County to Area 3 for Asbestos Workers, Area 1 for Boilermakers, Area 4 for Bricklayers, Stone masons, Marble masons, Terrazzo workers, and Tile Layers, Area 4 for Carpenters and Piledrivermen, Area 4 for Cement Masons, Area 2 for Glaziers, Area 3 for Ironworkers, Area 1 for Laborers, Area 5 for Millwrights, Area 7 for Painters, to Power Equipment Operators, to Area 2 For Roofers, Area 4 for Sheet Metal Workers, Area 5 for Soft Floor Layers, to Sprinkler Fitters, and Area 1 for Truck Drivers.					
Add:					
Electricians:					
Nicholas County					
Wiremen	11.80	.50	3%+.25	.25	.04
Cable Splicer	12.98	.50	3%+.25	.25	.04
Line Construction:					
Nicholas County					
Linemen	12.73	.50	3%+52	1.02	½ of 1%
Cable splicer & welders	14.00	.50	3%+.52	1.02	½ of 1%
Mechanized equipment operators	10.18	.50	3%+.52	1.02	½ of 1%
Groundmen	8.27	.50	3%+.52	1.02	½ of 1%

MODIFICATION P. 15

DECISION NO. WV78-3018 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Ironworkers- Structural, ornamental, and Reinforcing:					
Area 3	$11.50	.90	1.20		.09
Lathers:					
Area 2	11.75		.20		.01
Area 3	10.56	.50	.10		.01
Line Construction:					
Boone, Braxton, Cabell, Calhoun, Clay, Gilmer, Kanawha, Lincoln, Logan, Mason, Mingo, Putnam, Roane, Wayne, & Webster Counties:					
Linemen	12.73	.50	3%+.52	1.02	½ of 1%
Cable splicers	14.00	.50	3%+.52	1.02	½ of 1%
Groundmen	8.27	.50	3%+.52	1.02	½ of 1%
Mechanized Equipment Operators	10.18	.50	3%+.52	1.02	½ of 1%
Millwrights:					
Area 4	12.32	.50	6%		.02
Area 5	12.20	.50	.50		.02
Painters:					
Area 3					
Brush, roller, paper and vinyl hangers, and seamless floors	8.67	.65	.50		.01
Glove	8.92	.65	.50		.01
Brush - height over 40 feet	9.17	.65	.50		.01
Perfataping	9.04	.65	.50		.01
Spray, sandblast, seamless floors epoxy, and steam cleaning	9.67	.65	.50		.01
Plumbers & Pipefitters:					
Area 1	10.29	.55	.95	10%	.04
Area 2	10.54	.55	.95	10%	.04
Area 3	10.79	.55	.95	10%	.04
Area 4	11.04	.55	.95	10%	.04
Area 5	11.20	.40	1.01	1.12	.05
Sheet Metal Workers:					
Area 3	10.44	.45	.84		.04
Soft Floor Layers:					
Area 3	11.37	.50	.50		.02
Area 5	11.92	.50	.50		.02
Area 6	10.96	.40	.25		.02

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS: (Cont'd)					
Alamosa, Archuleta, Baca, Bent, Chaffee, Crowley, Custer, Fremont, Huerfano, Kiowa, La Animas, Mineral, Otero, Prowers, Pueblo and Rio Grande Counties					
Zone I (Within 12 miles from Pueblo Main Post Office)					
Electricians	$ 11.40	.72	3%+.65		1½%
Cable Splicers	12.54	.72	3%+.65		1½%
Zone II (12 to 20 miles from Pueblo Main Post Office)					
Electricians	11.80	.72	3%+.65		1½%
Cable Splicers	12.94	.72	3%+.65		1½%
Zone 3 (30 to 40 miles from Pueblo Main Post Office)					
Electricians	12.15	.72	3%+.65		1½%
Cable Splicers	13.29	.72	3%+.65		1½%
Zone 4 (40 miles and over from Pueblo Main Post Office)					
Electricians	13.28	.72	3%+.65		1½%
Cable Splicers	14.42	.72	3%+.65		1½%
Electricians on electrical contracts less than $20,000 in Zones 3 and 4	9.65	.72	3%+.65		1½%
Cheyenne, Elbert, El Paso, Kit Carson, Lincoln, Park, and Teller Counties					
Electricians	11.50	.72	3%+.65		.015
IRONWORKERS:					
Structural, Ornamental, and reinforcing	10.95	.94	1.25		.12
LINE CONSTRUCTION:					
Cable Splicers	11.78	.45	3%+.35		3/4%
Lineman Cableman	11.04	.45	3%+.35		3/4%
Lineman (Journeyman)	10.97	.45	3%+.35		3/4%
Line Equipment Operators	9.34	.45	3%+.35		3/4%
Line Equipment Maintenance Man	9.34	.45	3%+.35		3/4%
Groundman	7.70	.45	3%+.35		3/4%

SUPERSEDEAS DECISION

STATE: Colorado COUNTY: Statewide

DECISION NUMBER: CO78-5108 DATE : Date of Publication

Supersedes Decision No. CO77-5080 dated September 23, 1977, in 42 FR 48602

DESCRIPTION OF WORK: Heavy and Highway Construction

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS:					
Carpenters					
*Zone 1	$ 9.09	.78	.85	.65	.07
*Zone II	9.59	.78	.85	.65	.07
Underground Carpenters					
*Zone I	9.29	.78	.85	.65	.07
*Zone II	9.79	.78	.85	.65	.07
Working on Creosoted material, High work 40' above ground or floor on exposed scaffold or boatswains chair; Piledriving; Sawmen continuously assigned to 1½ HP saw at job site					
*Zone I	9.44	.78	.85	.65	.07
*Zone II	9.94	.78	.85	.65	.07
CEMENT MASONS:					
*Zone I	9.05	.52	1.15	.30	.11
*Zone II	9.55	.52	1.15	.30	.11
ELECTRICIANS:					
Adams, Arapahoe, Boulder, Clear Creek, Denver, Douglas, Eagle, Gilpin, Grand, Jefferson, Lake, Larimer, Logan, Morgan, Phillips, Sedgwick, Summit, Washington, Weld and Yuma Counties					
Electricians	11.69	.70	3%+.75		.02
Cable Splicers	11.94	.70	3%+.75		.02
Delta, Dolores, Garfield, Gunnison, Hinsdale, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkins, Rio Blanco, Routt, San Juan and San Miguel Counties					
Electricians	11.89	.72	3%+.25		1½%
Cable Splicers	12.14	.72	3%+.25		1½%

LABORERS	Basic Hourly Rates Zone 1	Basic Hourly Rates Zone 2	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$ 7.57	$ 8.07	.52	.60		.05
Group 2	7.67	8.17	.52	.60		.05
Group 3	7.97	8.47	.52	.60		.05
Group 4	8.12	8.62	.52	.60		.05
Group 5	8.32	8.82	.52	.60		.05
LABORERS (Tunnels)						
Group 1	7.57	8.07	.52	.60		.05
Group 2	8.47	8.97	.52	.60		.05
Group 3	8.57	9.07	.52	.60		.05
Group 4	8.65	9.15	.52	.60		.05
Group 5	8.72	9.22	.52	.60		.05
Group 6	9.12	9.62	.52	.60		.05
(Shafts, Raises, Missile Silos and all underground work other than Tunnels)						
Group 1	8.57	9.07	.52	.60		.05
Group 2	8.72	9.22	.52	.60		.05
Group 3	8.82	9.32	.52	.60		.05
Group 4	9.00	9.50	.52	.60		.05
Group 5	9.10	9.60	.52	.60		.05
Group 6	9.15	9.65	.52	.60		.05

PAINTERS:	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
Adams, Arapahoe, Boulder, Clear Creek, Delta, Denver, Douglas, Eagle, Elbert, Garfield, Gilpin, Grand, Gunnison, Jackson, Jefferson, Lake, Larimer, Logan, Mesa, Moffat, Montrose, Morgan, Park (Northern half), Phillips, Pitkin, Rio Blanco, Routt, Sedgwick, Summit, Washington, and Weld Counties					
Brush	$ 10.38	.70	.85		.07
Spray, Swing Stage	10.98	.70	.85		.07
Baca, Bent, Crowley, Custer, Heurfano, Kiowa, Las Animas, Otero, Prowers and Pueblo Cos.					
Brush	8.07	.50	.50		.04
Steel Painters	8.57	.50	.50		.04
Spray Painters	9.07	.50	.50		.04
Steel Spray	9.57	.50	.50		.04
Archuleta, Chaffee, Cheyenne, Dolores, El Paso, Fremont, Hinsdale, Kit Carson, La Plata, Lincoln, Mineral, Montezuma, Ouray, Park (Southern half), Rio Grande, Saguache, San Juan, San Miguel and Teller Counties					
Brush	8.94	.70	.50		.04
Spray	9.69	.70	.50		.04
Steel	9.44	.70	.50		.04
Steel Spray	10.19	.70	.50		.04

LABORERS

Group 1: Minimum Labor, including Caissons to 8'; Carrying Reinforcing Rods; Work on Cross Culverts, connections and side drains in connection with highway work, whether corrugated metal or concrete pipe; Fence Erectors; Metal Mesh; Dowel Bars; Tie Bars and Chairs in concrete paving; Flagman; Nursery Man including seeding, mulching and planting of trees, shrubs and flowers; Stake Chaser; Gabion Baskets and Reno Mattressess; Pipe plants and yards, stringing of pipe or skids, handling and signaling on pipe line work

Group 2: Chuck Tenders, Nippers, Core and Diamond Drill Helpers, Powdermen Heleprs; Hot Asphalt Labor, Rakers, Boxtenders, Asphalt Curb Machines, Potmen (not mechanical); Multi-plate Culvert Pipe; Air, gas and electrical tool operators; Barco Hammers; Spaders, electric hammers; Air Tampers; Cutting Torches on demolition work; Caissons 8' to 12'; Cofferdams; Power operated Concrete Buggies; Operators of concrete saws on pavement (other than gang saws); Timber and Chain Saws; Stresser or Stretcherman on Post Tension or Prestressed Concrete on or off jobsite; Tool Room Man and Checkers; Cement Finisher Helper; Sand Blaster; Sand Blaster Helper; Concrete processing material; Monitor; Spotters; Signalmen; Dumpmen; Transverse Concrete Conveyor Operator; Mechanical Grouters; Boring Machine (air hydraulic); Automatic Concrete Power Curbing Machine; Jack Hammer; Vibrators; Paving Breakers; Frostproofing; Any laborer performing bridge work over 40' above the ground or above a floor and working from a Bos'n Chair; Swing Stage, Life Belt or Block and Tackle as safety requirement. (All lines and safety belts used shall be of a type approved by State and Federal laws); Gunniting and Shotcrete Helpers; Caissons over 12'; Scalers; Timbermen, underpinning and shoring; Form-setters and/or stringmen on roads, highways, streets and airport runways; Distribution, placing and hooking of landing mats; Bull Float (hand operated) and Center Expansion Machines; Grade Checkers if required by employer; Pipe Wrappers; Dopers; Jeep Holiday Detector Men, Bandage Makers; Laborers working in trenches on all pipe lines, sewer, water, gas, oil, telephone conduit, Pen Stock, Siphons, drainage lines, Caulkers, Yarners, Fine Graders, air, gas, electric and hydraulic tools, Boring Machines, Hydraulic Jacks, Drills, Tampers, and similar operated tools; Wiping of Joint Concrete Pipe, inside and out; Labor, applicable to pipe coating or wrapping, plants and yards; Enamelers of pipe, inside and out

LABORERS (Cont'd)

Group 3: Powdermen and Blasters; Gunnite Nozzlemen; Shotcrete Operator; Pipe Layer on truck pipe lines in connection with highway work; Relining Pipe; Mixer Man; Pipelayer; Hydro-broom

Group 4: Wagon Drills and Air Tracks; Jack Hammer Operators in Caissons over 12'; Bellers and Stemmen; Licensed Powdermen; Diamond and Core Drills powered by air

Group 5: Any work, other than on bridges, performed by Laborers working from a Bos'n Chair, Swinging Stage, Life Belt or Block and Tackle as a safety requirement. All lines and safety belts used shall be of a type approved by State and Federal laws; Pugs and Galleys in Dams

LABORERS
(Tunnels)

Group 1: Outside Labor

Group 2: Minimum Tunnel Labor, Dry Houseman

Group 3: Cable or Hose Tenders, Chuck Tenders, Concrete Laborers, Dumpmen, Whirley Pump Operators

Group 4: Helpers on Shotcrete, Gunniting and Sand Blasting; Helpers, Core and Diamond Drills; Pot Tenders

Group 5: Cement Finisher Helper, applying or concrete processing materials

Group 6: Collapsible from movers and setters, Miners, Machine Men and Bit Grinders, Nippers, Powdermen and Blasters, Reinforcing Steel Setters, Timbermen (steel or wood tunnel support, including the placement of sheeting when required) and all cutting and welding that is incidental to the Miner's work; Tunnel Liner Plate Setters; Vibrator Men, internal and external; Unloading, stopping and starting of Moran Agitator Cars; Diamond and Core Drill Operators; Cement Finisher (underground); Shotcrete Operator; Gunnite Nozzlemen, Sand Blasters, Pump Concrete placement Men

LABORERS (Cont'd)

(Shafts, Raises, Missile Silos and all Underground Work other than Tunnels)

Group 1: Laborers, Topmen, Bottommen and Cagers

Group 2: Chucktenders, Concrete Laborers, Whirley Pump Operators

Group 3: Helpers in Shotcrete Gunniting and Sand Blasting; Helpers on Core and Diamond Drills; Pot Tenders; Cement Finisher Helpers; applying of Concrete processing material

Group 4: Collapsible form movers and setters, Miners, Machine Men and Bit Grinders, Nippers, Powdermen and Blasters, Reinforcing Steel Setters, Timbermen (steel or wood tunnel support, including the placement of sheeting when required) and all cutting and welding that is incidental to the Miner's work; Liner plate Setters; Vibrator Men, internal and external

Group 5: Diamond and Core Drill Operators; Cement Finisher (underground); Gunnite Nozzlemen; Shotcrete Operators; Sand Blasters and Pump Concrete Placement Men

Group 6: Any employee performing work underground from a Bos'n Chair, Swinging Stage, Life Belt or Block and Tackle as a safety requirement. (All lines and safety belts used shall be of a type approved by State and Federal laws)

POWER EQUIPMENT OPERATORS (Other than for work in Tunnels, Shafts and Raises)	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1*	ZONE 2*				
Group 1	$ 8.75	$9.50	.74	.90	.35	.06
Group 2	9.10	9.85	.74	.90	.35	.06
Group 3	9.45	10.20	.74	.90	.35	.06
Group 4	9.60	10.35	.74	.90	.35	.06
Group 5	9.75	10.50	.74	.90	.35	.06
Group 6	9.90	10.65	.74	.90	.35	.06
(For work in Tunnels, Shafts, and Raises)						
Group 1	8.90	9.65	.74	.90	.35	.06
Group 2	9.25	10.00	.74	.90	.35	.06
Group 3	9.35	10.10	.74	.90	.35	.06
Group 4	9.60	10.35	.74	.90	.35	.06
Group 5	9.75	10.50	.74	.90	.35	.06
Group 6	10.15	10.90	.74	.90	.35	.06

POWER EQUIPMENT OPERATORS
(Other than for work in Tunnels, Shafts and Raises)

Group 1: Air Compressor; Asphalt Screed; Oiler; Brakeman; Drill Operator - smaller than Williams MF and similar; Helper to Heavy Duty Mechanic and/or Welder; Operators of 5 or more light plants, Welding Machines, Generators, single unit conveyor; Pumps; Vacuum Well Point System; Tractor, under 70 HP with or without attachments

Group 2: Conveyor, handling building materials; Ditch Witch and similar Trenching Machine; Fireman or Tank Heater, road; Forklift; Haulage Motor Man; Pugmill; Portable Screening Plant with or without a spray bar; Screening Plants, with classifier; Self-propelled Roller, rubber-tired under 5 tons

Group 3: Asphalt Plant; Backfiller, Bituminous Spreader or Laydown Machine; Cableway Signalman; Caisson Drill; Williams MF, similar and larger; C.M.I. and similar; Concrete Batching Plants; Concrete finish Machine; Concrete Gang Saws on concrete paving; Concrete Mixer, less than 1 yd.; Concrete Placement Pumps, under 8 inches; Distributors, Bituminous Surfaces; Drill, Diamond or Core; Drill Rigs, rotary, churn, or cable tool; Elevating Graders, Equipment Lubricating and service Engineer; Engineer Fireman; Grout Machine; Gunnite Machine; Hoist, 1 drum; Hydraulic Backhoes, wheel mounted under 3/4 yd.; Loader, Barber Green, etc.; Loader up to and including 6 cu. yds.; Machine Doctor; Mechanic; Motor Grader/Blade, rough; Road Stabilization Machine; Rollers, self-propelled, all types over 5 tons; Sandblasting Machine; single unit portable crusher, with or without washer; Tie Tamper, wheel mounted; Tractor, 70 HP and over with or without attachments; Trenching Machine Operator; Welder; Winch on truck

Group 4: Cable operated Crane, track mounted; Cable operated power Shovels, Draglines, Clamshells, and Backhoes, 5 cu. yds. and under; Concrete Mixer over 1 cu. yd.; Concrete Paver 34E or similar; Concrete Placement Pumps, 8 inches and over; Crane, 50 tons and under; Hoist, 2 drums; Hydraulic Backhoe, 3/4 yd. and over; Loader, over 6 cu. yds.; Mechanic-welder, heavy duty; Mixer mobile; Motor Grader/blade, finish; Multiple unit portable Crusher, with or without washer; Piledriver; Scrapers, single bowl under 40 cu. yds.; Self-propelled Hydraulic Crane; Tractor with sideboom; Truck mounted Hydraulic Crane

POWER EQUIPMENT OPERATORS (Cont'd)
(Other than for work in Tnnels, Shafts and Raises)

Group 5: Cable operated power Shovels, Draglines, Clamshells and Backhoes over 5 cu. yds.; Crane, over 50 tons carrier mounted; Derrick; Electric rail type Tower Crane; Hoist, 3 drum or more; Quad Nine and similar push unit; Scrapers - single bowl including pups 40 cu. yds. and tandem bowls and over

Group 6: Cableway; Climbing Tower Crane; Crawler or truck mounted Tower Crane; Wheel Excavator, Tower Crane, truck type

POWER EQUIPMENT OPERATORS (Cont'd)
(For work in Tunnels, Shafts and Raises)

Group 1: Brakeman

Group 2: Motorman

Group 3: Compressor (900 CFM and over) serving Tunnels, Shafts and Raises

Group 4: Air Tractors; Grout Machine; Gunnite Machine; Jumbo Form; Mechanic; Welder

Group 5: Concrete Placement Pumps, 8" and over discharge; Mechanic-Welder, heavy duty; Mucking Machines and Front End Loaders, underground; Slusher; Mine Hoist Operator

Group 6: Mole

TRUCK DRIVERS	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1*	ZONE 2*				
Group 1	$ 8.15	$ 8.65	.74	.40	.30	
Group 2	8.25	8.75	.74	.40	.30	
Group 3	8.35	8.85	.74	.40	.30	
Group 4	8.40	8.90	.74	.40	.30	
Group 5	8.45	8.95	.74	.40	.30	
Group 6	8.50	9.00	.74	.40	.30	
Group 7	8.55	9.05	.74	.40	.30	
Group 8	8.60	9.10	.74	.40	.30	
Group 9	8.70	9.20	.74	.40	.30	
Group 10	8.75	9.25	.74	.40	.30	
Group 11	8.85	9.35	.74	.40	.30	
Group 12	9.00	9.50	.74	.40	.30	
Group 13	9.05	9.55	.74	.40	.30	
Group 14	9.15	9.65	.74	.40	.30	
Group 15	9.25	9.75	.74	.40	.30	
Group 16	9.35	9.85	.74	.40	.30	
Group 17	9.45	9.95	.74	.40	.30	
Group 18	9.65	10.15	.74	.40	.30	

TRUCK DRIVERS

Group 1: Pickups; Helpers; Scalemen; Checkers; Spotters; Dumpmen

Group 2: Dump Trucks, to and including 6 cu. yds.; Sweepers; Flat Rack, single axle; Liquid and Bulk Tankers, single axle; Warehouse men; Washers; Greasemen; Servicemen; Ambulance Drivers

Group 3: Dump Trucks, over 6 cu. yds. to and including 14 cu. yds.; Flat Rack, tandem axle; Battery Men; Mechanics' Helpers; Material Checkers; Cardex Men; Expeditors; Man Haul Shuttle Truck or Bus

Group 4: Straddle Truck; Lumber Carrier; Liquid and Bulk Tankers, tandem axle

Group 5: Fork Lift Driver; Fuel Truck; Grease Truck; Combination Fuel and Grease

Group 6: Distributor Truck Driver; Cement Mixer, Agitator Truck to and inlcuding 10 cu. yds.; Liquid and Bulk Tankers, semi or combination

Group 7: Multi-purpose Truck; Speciality and Hoisting

Group 8: Dump Trucks, over 14 cu. yds. to and including 29 cu. yds.; High Boy, Low Boy, Floats, semi; Cab operated Distributor Truck Driver, semi; Liquid and Bulk Tankers, Euclid, Electric or similar; Truck Drivers; Dumptor type Youngbuggy, Jumbo and similar type equipment

Group 9: Truck Driver, Snow Plow

Group 10: Cement Mixer, Agitator Truck, over 10 cu. yds., to and including 15 cu. yds.

Group 11: Dump Trucks, over 29 cu. yds. to and including 39 cu. yds.

Group 12: Cement Mixer, Agitator Truck, over 15 cu. yds.

Group 13: Dump Trucks, over 39 cu. yds. to and including 54 cu. yds.; Tireman

Group 14: Mechanic

Group 15: Dump trucks, over 54 cu. yds. to and including 79 cu. yds.

Group 16: Heavy Duty Diesel, Mechanics, Body Men, Welders or Combination Men

Group 17: Dump Trucks, over 75 cu. yds. to and including 104 cu. yds.

Group 18: Dump Trucks, over 104 cu. yds.

*ZONE DESCRIPTIONS

Carpenters, Cement Masons, Laborers
Power Equipment Operators and Truck Drivers

A. Counties entirely within Zone 1:

Alamosa	Custer	Huerfano	Otero
Archuleta	Delta	Jefferson	Phillips
Bent	Denver	La Plata	Prowers
Boulder	Douglas	Larimer	Pueblo
Chaffee	El Paso	Logan	Rio Grande
Clear Creek	Fremont	Mesa	Sedgwick
Conejos	Garfield	Montezuma	Teller
Costilla	Gilpin	Morgan	Weld
Crowley			

B. Counties entirely within Zone 2:

Baca	Jackson	Moffat	Saguache
Cheyenne	Kiowa	Ouray	San Juan
Dolores	Kit Carson	Park	San Miguel
Grand	Lake	Pitkin	Summit
Gunnison	Lincoln	Rio Blanco	Yuma
Hinsdale	Mineral	Routt	

C. Legal description of the portions of Adams, Arapahoe, Eagle, Elbert, Las Animas, Montrose and Washington Counties which are included within Zone 1, as follows:

All of Adams, Arapahoe, Elbert and Las Animas Counties lying west of the Township line between R59W and R60W of the 7th Guide Meridian West; and all of Eagle County lying west of the Township line between R80W and R81W of the 10th Guide Meridian West and all of Montrose County lying Northerly of the North line of Ouray County and said North line extended West of the Township line between R11W and R12W, said part lying East of said Township line of the New Mexico Principal Meridian, and all of Washington County lying North of the 40°00'00" Latitude Base Line.

D. Legal description of the portions of Adams, Arapahoe, Eagle, Elbert, Las Animas, Montrose and Washington Counties which are included with Zone 2, as follows:

All of Adams, Arapahoe, Elbert and Las Animas lying East of the Township line between R59W and R60W of the 7th Guide Meridian West, and all of Eagle County lying East of the Township line between R80W and R81W of the 9th Guide Meridian West and all of Montrose County except that part lying Northerly of the North line of Ouray County and said North line extended West of said Township line between R11W and R12W, said point being East of said Township line of the New Mexico Principal Meridian and all of Washington County lying South of the 40°00'00" Latitude Base Line.

SUPERSEDEAS DECISION

STATE: Colorado

COUNTIES: Adams, Arapahoe, Boulder, Clear Creek, Denver, Douglas, Eagle, Elbert, Gilpin, Grand, Jefferson, Lake, Larimer, Morgan Park, Summit, and Weld

DECISION NUMBER: CO78-5109 DATE: Date of Publication

Supersedes Decision No. CO77-5081 dated September 23, 1977, in 42 FR 48610

DESCRIPTION OF WORK: Building Construction (does not include single family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 11.44	.57	$ 1.20		
BOILERMAKERS	10.30	.85	1.00		.02
BRICKLAYERS; Stonemasons:					
Eagle County	10.20	.85	.95		.05
Boulder and Grand Counties	9.25	.85	.95		.05
Elbert, Lake and Park Counties	10.15	.85	.70		.04
Larimer County	10.05	.85	.95		.05
Remaining Counties	10.20	.85	.95		.05
CARPENTERS:					
Adams, Arapahoe, Boulder, Clear Creek, Denver, Douglas, Elbert, Grand, Gilpin, Jefferson and Park (Northern Area) Counties					
Area (a) Denver Metropolitan Area including Louisville, Golden, Boulder and Longmont, basing points					
Zone I (0 to 20 miles)	10.065	.80	.90	.75	.08
Zone II (20 to 50 miles)	11.32	.80	.90	.75	.08
Zone III (50 miles and over)	12.58	.80	.90	.75	.08
Morgan and Weld Counties:					
Area (b) Denver Northeastern Area of Colorado including Greeley, Loveland and Fort Morgan basing points					
Zone I (0 to 20 miles)	10.065	.80	.90	.75	.08
Zone II (20 to 50 miles)	11.32	.80	.90	.75	.08
Zone III (50 miles and over)	12.58	.80	.90	.75	.08
Larimer County (S.E. portion within Loveland basing point, Zone 1)	10.065	.80	.90	.75	.08

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS: (Cont'd)					
Larimer (Remainder of County), Eagle, Lake, Park (South 40 miles) and Summit Counties					
Zone I (0-30 miles from P.O. in Leadville or Fort Collins)	$ 9.27	.80	.90	.75	.07
Zone II (30-60 miles from P.O. in Leadville or Fort Collins)	9.77	.80	.90	.75	.07
Zone III (All work outside of the 60 mile radius from P.O. in Leadville or Fort Collins)	10.02	.80	.90	.75	.07
CEMENT MASONS:					
Cement Masons	10.48	.52	1.15		.11
Working with composition materials and color	10.98	.52	1.15		.11
Working on scaffold, swing stage, or temporary platform over 25'	10.73	.52	1.15		.11
DRYWALL INSTALLERS	9.29	.78	.85	.65	.07
ELECTRICIANS:					
Elbert and Park Counties Electricians	10.95	.42	3%+.50		.015
Larimer, Morgan and Weld Cos. Electricians	9.00	.70	3%+1.25		3/10%
Remaining Counties Electricians	11.69	.70	3%+1.25		.02
Cable Splicers	11.94	.70	3%+1.25		.02
ELEVATOR CONSTRUCTORS	11.14	.745	.35	4%+a	.02
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.745	.35	4%+a	.02
GLAZIERS	12.15				
IRONWORKERS:	-				
Structural, Ornamental, and Reinforcing	10.95	.94	1.25		.12
LATHERS	11.24				.01

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MARBLE SETTERS:					
Elbert, Lake and Park Cos.	$ 9.86	.50	.50		.04
Remaining Counties	10.26	.90	.85		.07
MILLWRIGHTS	10.86	.80	.85	6%	.13
PAINTERS:					
Park County (Southern half)					
Brush, Roller, Taper, hand texture	8.94	.70	.50		.04
Steel and Paperhanger	9.44	.70	.50		.04
Spray	9.69	.70	.50		.04
Steel Spray	10.19	.70	.50		.04
Remaining Counties including N½ of Park County*					
Brush, Roller and Drywall Finisher	11.15	.70	1.00		.07
Spray; Swing Stage, Paperhangers	11.75	.70	1.00		.07
PLASTERERS	10.84				.01
PLUMBERS; Steamfitters:					
Southern portions of Douglas, Elbert and Park Counties*	9.05	.60	.75	1.17	.08
Boulder County	11.25	.80	1.05	.65	.10
Remaining Counties (including Northern portions of Douglas, Elbert and Park Counties)	11.17	.80	1.05	.75	.08
ROOFERS:					
Eagle and Southern portions of Lake, Jefferson, Park, Douglas and Elbert Counties**	7.91	.42	.10		
Remaining Counties including Northern portions of Lake, Park, Jefferson, Douglas and Elbert Counties	9.81	.80	.50		.08
SHEET METAL WORKERS	11.95	3%+.64	1.41		.09
SOFT FLOOR LAYERS	10.38	.40	.75	.30	.10
SPRINKLER FITTERS	12.10	.75	1.05		.08

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TERRAZZO WORKERS	$ 10.26	.90	.85		.04
TILE LAYERS:					
Elbert, Lake and Park Counties	9.86	.50	.50		
Remaining Counties	10.26	.90	.85		.04
TILE, MARBLE & TERRAZZO HELPERS:					
Helpers	7.85	.90	.85	.50	
Floor Grinders	8.00	.90	.85	.50	
Base Grinders	8.55	.90	.85	.50	

*Park County dividing Line:
Line from the S.W. corner of Jefferson County to the S.E. corner of Lake County

**Area South of Lake County to a point 2 miles north of the City of Leadville to a point 1/2 mile north of the City of Limon at the west border of Lincoln County

FOOTNOTE:
a. Employer contributes 4% basic hourly rate for over 5 years' service and 2% basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit. Six Paid Holidays: A through F.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day;
D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

LABORERS	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
				H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1	ZONE 2	ZONE 3				
Group 1	$ 5.50	$ 5.95	$ 6.40	.52	.60		.05
Group 2	7.67	8.12	8.57	.52	.60		.05
Group 3	7.95	8.40	8.85	.52	.60		.05
Group 4	8.17	8.62	9.07	.52	.60		.05
Group 5	8.22	8.67	9.12	.52	.60		.05
Group 6	8.47	8.92	9.37	.52	.60		.05

LABORERS

Group 1: Watchmen tending Heaters and Pumps

Group 2: Building Construction Laborer

Group 3: Laborers - Underpinning and Shoring eight (8) feet or more below working surface.
Power Tool Operators of all mechanical, air, gas and electrical tools, including Self-propelled Buggies and Cement Finishers Tenders. Laborers preparing and placing of stone or any other aggregate in sand bed to be used as exposed face of Tilt-up Panels.
Burners on Demolition and Welders, Gunnite Nozzleman and Sandblasters.

Group 4: Pipelayers on Building Construction

Group 5: Jackhammer Operator for Underpinning and Shoring over twelve (12) feet below working surface, Bellers and Stemmers on Caisson Work.

Group 6: Tender, Mason and Plaster

POWER EQUIPMENT OPERATORS (Other than for work in Tunnels, Shafts and Raises)	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1*	ZONE 2*				
Group 1	$ 8.75	$9.50	.74	.90	.35	.06
Group 2	9.10	9.85	.74	.90	.35	.06
Group 3	9.45	10.20	.74	.90	.35	.06
Group 4	9.60	10.35	.74	.90	.35	.06
Group 5	9.75	10.50	.74	.90	.35	.06
Group 6	9.90	10.65	.74	.90	.35	.06
(For work in Tunnels, Shafts, and Raises)						
Group 1	8.90	9.65	.74	.90	.35	.06
Group 2	9.25	10.00	.74	.90	.35	.06
Group 3	9.35	10.10	.74	.90	.35	.06
Group 4	9.60	10.35	.74	.90	.35	.06
Group 5	9.75	10.50	.74	.90	.35	.06
Group 6	10.15	10.90	.74	.90	.35	.06

POWER EQUIPMENT OPERATORS
(Other than for work in Tunnels, Shafts and Raises)

Group 1: Air Compressor; Asphalt Screed; Oiler; Brakeman; Drill Operator - smaller than Williams MF and similar; Helper to Heavy Duty Mechanic and/or Welder; Operators of 5 or more light plants, Welding Machines, Generators, single unit conveyor; Pumps; Vacuum Well Point System; Tractor, under 70 HP with or without attachments

Group 2: Conveyor, handling building materials; Ditch Witch and similar Trenching Machine; Fireman or Tank Heater, road; Forklift; Haulage Motor Man; Pugmill; Portable Screening Plant with or without a spray bar; Screening Plants, with classifier; Self-propelled Roller, rubber-tired under 5 tons

Group 3: Asphalt Plant; Backfiller, Bituminous Spreader or Laydown Machine; Cableway Signalman; Caisson Drill; Williams MF, similar and larger; C.M.I. and similar; Concrete Batching Plants; Concrete finish Machine; Concrete Gang Saws on concrete paving; Concrete Mixer, less than 1 yd.; Concrete Placement Pumps, under 8 inches; Distributors, Bituminous Surfaces; Drill, Diamond or Core; Drill Rigs, rotary, churn, or cable tool; Elevating Graders, Equipment Lubricating and service Engineer; Engineer Fireman; Grout Machine; Gunnite Machine; Hoist, 1 drum; Hydraulic Backhoes, wheel mounted under 3/4 yd.; Loader, Barber Green, etc.; Loader up to and including 6 cu. yds.; Machine Doctor; Mechanic; Motor Grader/Blade, rough; Road Stabilization Machine; Rollers, self-propelled, all types over 5 tons; Sandblasting Machine; single unit portable crusher, with or without washer; Tie Tamper, wheel mounted; Tractor, 70 HP and over with or without attachments; Trenching Machine Operator; Welder; Winch on truck

Group 4: Cable operated Crane, track mounted; Cable operated power Shovels, Draglines, Clamshells, and Backhoes, 5 cu. yds. and under; Concrete Mixer over 1 cu. yd.; Concrete Paver 34E or similar; Concrete Placement Pumps, 8 inches and over; Crane, 50 tons and under; Hoist, 2 drums; Hydraulic Backhoe, 3/4 yd. and over; Loader, over 6 cu. yds.; Mechanic-welder, heavy duty; Mixer mobile; Motor Grader/blade, finish; Multiple unit portable Crusher, with or without washer; Piledriver; Scrapers, single bowl under 40 cu. yds.; Self-propelled Hydraulic Crane; Tractor with sideboom; Truck mounted Hydraulic Crane

POWER EQUIPMENT OPERATORS (Cont'd)
(Other than for work in Tunnels, Shafts and Raises)

Group 5: Cable operated power Shovels, Draglines, Clamshells and Backhoes over 5 cu. yds.; Crane, over 50 tons carrier mounted; Derrick; Electric rail type Tower Crane; Hoist, 3 drum or more; Quad Nine and similar push unit; Scrapers - single bowl including pups 40 cu. yds. and tandem bowls and over

Group 6: Cableway; Climbing Tower Crane; Crawler or truck mounted Tower Crane; Wheel Excavator, Tower Crane, truck type

POWER EQUIPMENT OPERATORS (Cont'd)
(For work in Tunnels, Shafts and Raises)

Group 1: Brakeman

Group 2: Motorman

Group 3: Compressor (900 CFM and over) serving Tunnels, Shafts and Raises

Group 4: Air Tractors; Grout Machine; Gunnite Machine; Jumbo Form; Mechanic; Welder

Group 5: Concrete Placement Pumps, 8" and over discharge; Mechanic-Welder, heavy duty; Mucking Machines and Front End Loaders, underground; Slusher; Mine Hoist Operator

Group 6: Mole

TRUCK DRIVERS

	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1*	ZONE 2*				
Group 1	$ 8.15	$ 8.65	.74	.40	.30	
Group 2	8.25	8.75	.74	.40	.30	
Group 3	8.35	8.85	.74	.40	.30	
Group 4	8.40	8.90	.74	.40	.30	
Group 5	8.45	8.95	.74	.40	.30	
Group 6	8.50	9.00	.74	.40	.30	
Group 7	8.55	9.05	.74	.40	.30	
Group 8	8.60	9.10	.74	.40	.30	
Group 9	8.70	9.20	.74	.40	.30	
Group 10	8.75	9.25	.74	.40	.30	
Group 11	8.85	9.35	.74	.40	.30	
Group 12	9.00	9.50	.74	.40	.30	
Group 13	9.05	9.55	.74	.40	.30	
Group 14	9.15	9.65	.74	.40	.30	
Group 15	9.25	9.75	.74	.40	.30	
Group 16	9.35	9.85	.74	.40	.30	
Group 17	9.45	9.95	.74	.40	.30	
Group 18	9.65	10.15	.74	.40	.30	

TRUCK DRIVERS

Group 1: Pickups; Helpers; Scalemen; Checkers; Spotters; Dumpmen

Group 2: Dump Trucks, to and including 6 cu. yds.; Sweepers; Flat Rack, single axle; Liquid and Bulk Tankers, single axle; Warehouse men; Washers; Greasemen; Servicemen; Ambulance Drivers

Group 3: Dump Trucks, over 6 cu. yds. to and including 14 cu. yds.; Flat Rack, tandem axle; Battery Men; Mechanics' Helpers; Material Checkers; Cardex Men; Expeditors; Man Haul Shuttle Truck or Bus

Group 4: Straddle Truck; Lumber Carrier; Liquid and Bulk Tankers, tandem axle

Group 5: Fork Lift Driver; Fuel Truck; Grease Truck; Combination Fuel and Grease

Group 6: Distributor Truck Driver; Cement Mixer, Agitator Truck to and including 10 cu. yds.; Liquid and Bulk Tankers, semi or combination

Group 7: Multi-purpose Truck; Speciality and Hoisting

Group 8: Dump Trucks, over 14 cu. yds. to and including 29 cu. yds.; High Boy, Low Boy, Floats, semi; Cab operated Distributor Truck Driver, semi; Liquid and Bulk Tankers, Euclid, Electric or similar; Truck Drivers, Dumptor type Youngbuggy, Jumbo and similar type equipment

Group 9: Truck Driver, Snow Plow

Group 10: Cement Mixer, Agitator Truck, over 10 cu. yds., to and including 15 cu. yds.

Group 11: Dump Trucks, over 29 cu. yds. to and including 39 cu. yds.

Group 12: Cement Mixer, Agitator Truck, over 15 cu. yds.

Group 13: Dump Trucks, over 39 cu. yds. to and including 54 cu. yds.; Tireman

Group 14: Mechanic

Group 15: Dump trucks, over 54 cu. yds. to and including 79 cu. yds.

Group 16: Heavy Duty Diesel, Mechanic, Body Men, Welders or Combination Men

Group 17: Dump Trucks, over 75 cu. yds. to and including 104 cu. yds.

Group 18: Dump Trucks, over 104 cu. yds.

ZONE DESCRIPTIONS

LABORERS

CITIES within ZONES 1, 2, and 3:

Boulder	Denver	Dillon
Eagle	Englewood	Fort Collins
Fort Morgan	Golden	Grandby
Greeley	Leadville	Vail

ZONE 1 - That area encompassed by 0 to 30 driving miles from the Main Post Office

ZONE 2 - That area encompassed by 30 to 70 driving miles from the Main Post Office

ZONE 3 - That area encompassed by 70 driving miles and over from the Main Post Office

Power Equipment Operators and Truck Drivers

A. Counties entirely within Zone 1:

Boulder	Denver	Douglas
Clear Creek	Gilpin	Jefferson
Larimer	Morgan	Weld

B. Counties entirely within Zone 2:

Grand Lake Park Summit

C. Legal description of the portion sof Adams, Arapahoe, Eagle and Elbert Counties which are included within Zone 1, as follows:

All of Adams, Arapahoe, Wlbert Counties lying west of the Township line between R59W and R60W of the 8th Guide Meridian West; and all of Eagle County lying West of the Township line between R80W and R81W of the 10th Guide Meridian West

D. Legal description of the portions of Adams, Arapahoe, Eagle and Elbert Counties which are included within Zone 2, as follows:

All of Adams, Arapahoe, Elbert Counties lying East of the Township line between R59 and R60W of the 8th Guide Meridian West, and all of Eagle County lying East of the Township line between R80W and R81W of the 9th Guide Meridian West

SUPERSEDEAS DECISION

STATE: Colorado COUNTY: El Paso
DECISION NUMBER: CO78-5110 DATE: Date of Publication
Supersedes Decison No. CO77-5082 dated September 23, 1977, in 42 FR 48617
DESCRIPTION OF WORK: Building Construction (does not include single family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 11.44	.57	$ 1.20		
BOILERMAKERS	10.30	.85	1.00		.02
BRICKLAYERS; Stonemasons	10.15	.85	.70		.04
CARPENTERS:					
Zone I-0-30 miles from Post Office in Colorado Springs)	9.27	.80	.90	.75	.07
Zone 2 (30 miles and over from Post Office in Colorado Springs)	9.77	.80	.90	.75	.07
CEMENT MASONS:					
Cement Masons	10.48	.52	1.15		.11
Working with Composition materials and color	10.98	.52	1.15		.11
Working on temporary platform over 25'	10.73	.52	1.15		.11
DRYWALL INSTALLERS	9.29	.78	.85	.65	.07
ELECTRICIANS	11.50	.72	3%+.65		.015
ELEVATOR CONSTRUCTORS	11.14	.745	.35	4%+a	.02
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.745	.35	4%+a	.02
GLAZIERS	12.15				
IRONWORKERS:					
Structural, Ornamental, and Reinforcing	10.95	.94	1.25		.12
LATHERS	11.09				.01
MARBLE SETTERS	9.86	.50	.50		
MILLWRIGHTS	10.86	.80	.85	6%	.13
PAINTERS:					
Brush and Roller; Tapers, hand texture	9.69	.70	.50		.04
Paperhangers; Steel,brush	10.19	.70	.50		.04
Spray Painters	10.44	.70	.50		.04
Steel, Spray	10.94	.70	.50		.04
PLASTERERS	10.84				.01
PLUMBERS; Pipefitters	10.60	.80	1.05	1.60	.10
ROOFERS	9.41	.52	.40		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SHEET METAL WORKERS	$ 11.95	3%+.64	$ 1.41		.09
SOFT FLOOR LAYERS	10.38	.40	.75	.30	.10
SPRINKLER FITTERS	12.10	.75	1.05		.08
TERRAZZO WORKERS	10.26	.90	.85		.04
TILE SETTERS	9.86	.50	.50		
TILE, MARBLE & TERRAZZO HELPERS:					
Helpers	7.85	.90	.85	.50	
Floor Grinders	8.00	.90	.85	.50	
Base Grinders	8.55	.90	.85	.50	

FOOTNOTES:
a. Employer contributes 4% of basic hourly rate for over 5 years' service; 2% basic hourly rate for 6 months to 5 years service as Vacation Pay Credit. Six Paid Holidays: A through F.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

LABORERS	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
				H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1	ZONE 2	ZONE 3				
Group 1	$ 5.50	$ 5.95	$ 6.40	.52	.60		.05
Group 2	7.67	8.12	8.57	.52	.60		.05
Group 3	7.95	8.40	8.85	.52	.60		.05
Group 4	8.17	8.62	9.07	.52	.60		.05
Group 5	8.22	8.67	9.12	.52	.60		.05
Group 6	8.47	8.92	9.37	.52	.60		.05

ZONE 1 - That area encompassed by 0 to 30 driving miles from the Main Post Office in Colorado Springs

ZONE 2 - That area encompassed by 30 to 70 driving miles from the Main Post Office in Colorado Springs

ZONE 3 - That area encompassed by 70 driving miles and over from the Main Post Office in Colorado Springs.

LABORERS

Group 1: Watchmen tending Heaters and Pumps

Group 2: Building Construction Laborer

Group 3: Laborers - Underpinning and Shoring eight (8) feet or more below working surface.
Power Tool Operators of all mechanical, air, gas and electrical tools, including Self-propelled Buggies and Cement Finishers Tenders. Laborers preparing and placing of stone or any other aggregate in sand bed to be used as exposed face of Tilt-up Panels.
Burners on Demolition and Welders, Gunnite Nozzleman and Sandblasters.

Group 4: Pipelayers on Building Construction

Group 5: Jackhammer Operator for Underpinning and Shoring over twelve (12) feet below working surface, Bellers and Stemmers on Caisson Work.

Group 6: Tender, Mason and Plaster

POWER EQUIPMENT OPERATORS (Other than for work in Tunnels, Shafts and Raises)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$ 8.75	.74	.90	.35	.06
Group 2	9.10	.74	.90	.35	.06
Group 3	9.45	.74	.90	.35	.06
Group 4	9.60	.74	.90	.35	.06
Group 5	9.75	.74	.90	.35	.06
Group 6	9.90	.74	.90	.35	.06
(For work in Tunnels, Shafts, and Raises)					
Group 1	8.90	.74	.90	.35	.06
Group 2	9.25	.74	.90	.35	.06
Group 3	9.35	.74	.90	.35	.06
Group 4	9.60	.74	.90	.35	.06
Group 5	9.75	.74	.90	.35	.06
Group 6	10.15	.74	.90	.35	.06

POWER EQUIPMENT OPERATORS
(Other than for work in Tunnels, Shafts and Raises)

Group 1: Air Compressor; Asphalt Screed; Oiler; Brakeman; Drill Operator - smaller than Williams MF and similar; Helper to Heavy Duty Mechanic and/or Welder; Operators of 5 or more light plants, Welding Machines, Generators, single unit conveyor; Pumps; Vacuum Well Point System; Tractor, under 70 HP with or without attachments

Group 2: Conveyor, handling building materials; Ditch Witch and similar Trenching Machine; Fireman or Tank Heater, road; Forklift; Haulage Motor Man; Pugmill; Portable Screening Plant with or without a spray bar; Screening Plants, with classifier; Self-propelled Roller, rubber-tired under 5 tons

Group 3: Asphalt Plant; Backfiller, Bituminous Spreader or Laydown Machine; Cableway Signalman; Caisson Drill; Williams MF, similar and larger; C.M.I. and similar; Concrete Batching Plants; Concrete finish Machine; Concrete Gang Saws on concrete paving; Concrete Mixer, less than 1 yd.; Concrete Placement Pumps, under 8 inches; Distributors, Bituminous Surfaces; Drill, Diamond or Core; Drill Rigs, rotary, churn, or cable tool; Elevating Graders, Equipment Lubricating and service Engineer; Engineer Fireman; Grout Machine; Gunnite Machine; Hoist, 1 drum; Hydraulic Backhoes, wheel mounted under 3/4 yd.; Loader, Barber Green, etc.; Loader up to and including 6 cu. yds.; Machine Doctor; Mechanic; Motor Grader/Blade, rough; Road Stabilization Machine; Rollers, self-propelled, all types over 5 tons; Sandblasting Machine; single unit portable crusher, with or without washer; Tie Tamper, wheel mounted; Tractor, 70 HP and over with or without attachments; Trenching Machine Operator; Welder; Winch on truck

Group 4: Cable operated Crane, track mounted; Cable operated power Shovels, Draglines, Clamshells, and Backhoes, 5 cu. yds. and under; Concrete Mixer over 1 cu. yd.; Concrete Paver 34E or similar; Concrete Placement Pumps, 8 inches and over; Crane, 50 tons and under; Hoist, 2 drums; Hydraulic Backhoe, 3/4 yd. and over; Loader, over 6 cu. yds.; Mechanic-welder, heavy duty; Mixer mobile; Motor Grader/blade, finish; Multiple unit portable Crusher, with or without washer; Piledriver; Scrapers, single bowl under 40 cu. yds.; Self-propelled Hydraulic Crane; Tractor with sideboom; Truck mounted Hydraulic Crane

POWER EQUIPMENT OPERATORS (Cont'd)
(Other than for work in Tunnels, Shafts and Raises)

Group 5: Cable operated power Shovels, Draglines, Clamshells and Backhoes over 5 cu. yds.; Crane, over 50 tons carrier mounted; Derrick; Electric rail type Tower Crane; Hoist, 3 drum or more; Quad Nine and similar push unit; Scrapers - single bowl including pups 40 cu. yds. and tandem bowls and over

Group 6: Cableway; Climbing Tower Crane; Crawler or truck mounted Tower Crane; Wheel Excavator, Tower Crane, truck type

POWER EQUIPMENT OPERATORS (Cont'd)
(For work in Tunnels, Shafts and Raises)

Group 1: Brakeman

Group 2: Motorman

Group 3: Compressor (900 CFM and over) serving Tunnels, Shafts and Raises

Group 4: Air Tractors; Grout Machine; Gunnite Machine; Jumbo Form; Mechanic; Welder

Group 5: Concrete Placement Pumps, 8" and over discharge; Mechanic-Welder, heavy duty; Mucking Machines and Front End Loaders, underground; Slusher; Mine Hoist Operator

Group 6: Mole

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$ 8.15	.74	.40	.30	
Group 2	8.25	.74	.40	.30	
Group 3	8.35	.74	.40	.30	
Group 4	8.40	.74	.40	.30	
Group 5	8.45	.74	.40	.30	
Group 6	8.50	.74	.40	.30	
Group 7	8.55	.74	.40	.30	
Group 8	8.60	.74	.40	.30	
Group 9	8.70	.74	.40	.30	
Group 10	8.75	.74	.40	.30	
Group 11	8.85	.74	.40	.30	
Group 12	9.00	.74	.40	.30	
Group 13	9.05	.74	.40	.30	
Group 14	9.15	.74	.40	.30	
Group 15	9.25	.74	.40	.30	
Group 16	9.35	.74	.40	.30	
Group 17	9.45	.74	.40	.30	
Group 18	9.65	.74	.40	.30	

TRUCK DRIVERS

Group 1: Pickups; Helpers; Scalemen; Checkers; Spotters; Dumpmen

Group 2: Dump Trucks, to and including 6 cu. yds.; Sweepers; Flat Rack, single axle; Liquid and Bulk Tankers, single axle; Warehouse men; Washers; Greasemen; Servicemen; Ambulance Drivers

Group 3: Dump Trucks, over 6 cu. yds. to and including 14 cu. yds.; Flat Rack, tandem axle; Battery Men; Mechanics' Helpers; Material Checkers; Cardex Men; Expeditors; Man Haul Shuttle Truck or Bus

Group 4: Straddle Truck; Lumber Carrier; Liquid and Bulk Tankers, tandem axle

Group 5: Fork Lift Driver; Fuel Truck; Grease Truck; Combination Fuel and Grease

Group 6: Distributor Truck Driver; Cement Mixer, Agitator Truck to and including 10 cu. yds.; Liquid and Bulk Tankers, semi or combination

Group 7: Multi-purpose Truck; Speciality and Hoisting

Group 8: Dump Trucks, over 14 cu. yds. to and including 29 cu. yds.; High Boy, Low Boy, Floats, semi; Cab operated Distributor Truck Driver, semi; Liquid and Bulk Tankers, Euclid, Electric or similar; Truck Drivers, Dumptor type Youngbuggy, Jumbo and similar type equipment

Group 9: Truck Driver, Snow Plow

Group 10: Cement Mixer, Agitator Truck, over 10 cu. yds., to and including 15 cu. yds.

Group 11: Dump Trucks, over 29 cu. yds. to and including 39 cu. yds.

Group 12: Cement Mixer, Agitator Truck, over 15 cu. yds.

Group 13: Dump Trucks, over 39 cu. yds. to and including 54 cu. yds.; Tireman

Group 14: Mechanic

Group 15: Dump trucks, over 54 cu. yds. to and including 79 cu. yds.

Group 16: Heavy Duty Diesel, Mechanic, Body Men, Welders or Combination Men

Group 17: Dump Trucks, over 75 cu. yds. to and including 104 cu. yds.

Group 18: Dump Trucks, over 104 cu. yds.

SUPERSEDEAS DECISION

STATE: Colorado

COUNTIES: Las Animas, Otero and Pueblo

DECISION NUMBER: CO78-5112

DATE: Date of Publication

Supersedes Decision No. CO77-5083 dated September 23, 1977, in 42 FR 48622

DESCRIPTION OF WORK: Building Construction (does not include single family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 11.44	.57	$ 1.20		
BOILERMAKERS	10.30	.85	1.00		.02
BRICKLAYERS	10.27	.85	.70		.04
CARPENTERS	9.27	.80	.90	.75	.07
CEMENT MASONS:					
Cement Masons	10.48	.52	1.15		.11
Working with composition material and color	10.98	.52	1.15		.11
Working on scaffold, swing stage or temporary platform over 25'	10.73	.52	1.15		.11
DRYWALL INSTALLERS	9.29	.78	.85	.65	.07
ELECTRICIANS:					
Zone I (0-12 miles from P. O.)					
Electricians	11.40	.72	3%+.65		1½%
Cable Splicers	12.54	.72	3%+.65		1½%
Zone II (12-20 miles from P.O.)					
Electricians	11.80	.72	3%+.65		1½%
Cable Splicers	12.94	.72	3%+.65		1½%
Zone III (20-40 miles from P.O.)					
Electricians	12.15	.72	3%+.65		1½%
Cable Splicers	13.29	.72	3%+.65		1½%
Zone IV (Over 40 miles from P.O.)					
Electricians	13.28	.72	3%+.65		1½%
Cable Splicers	14.42	.72	3%+.65		1½%
Electrical contracts under $20,000 in Zones III and IV	9.65	.72	3%+.65		1½%
ELEVATOR CONSTRUCTORS	11.14	.745	.35	4%+a	.02
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.745	.35	4%+a	.02
GLAZIERS	12.15				
IRONWORKERS:					
Structural; Ornamental and Reinforcing	10.95	.94	1.25		.12
LATHERS	10.29				.01

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MARBLE & TILE SETTERS, TERRAZZO WORKERS	$ 10.26	.90	.85		.04
MILLWRIGHTS	10.86	.80	.85	6%	.13
PAINTERS:					
Brush, roller, tapers, hand texture	8.82	.50	.50		.04
Steel, brush; Paperhangers	9.32	.50	.50		.04
Spray, Tapers using Automatic tools	9.82	.50	.50		.04
Steel, Spray	10.32	.50	.50		.04
PLASTERERS	10.84				.01
PLUMBERS:					
Zone I (0-15 miles from P.O.)	12.27	.80	1.05		.08
Zone II (15-20 miles from P.O.)	12.84	.80	1.05		.08
Zone III (20-40 miles from P.O.)	13.27	.80	1.05		.08
Zone IV (Over 40 miles from P.O.)	14.295	.80	1.05		.08
ROOFERS	9.41	.52	.40		
SHEET METAL WORKERS	11.95	3%+.64	1.41		.09
SOFT FLOOR LAYERS:					
Las Animas and Otero Counties	10.38	.40	.75	.30	.10
Pueblo County	9.00	.40	.75	.30	.05
SPRINKLER FITTERS	12.10	.75	1.05		.08
TILE, MARBLE & TERRAZZO HELPERS:					
Helpers	7.85	.90	.85	.50	
Floor Grinders	8.00	.90	.85	.50	
Base Grinders	8.55	.90	.85	.50	

FOOTNOTE:

a. Employer contributes 4% of basic hourly rate for over 5 years' service and 2% of basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit. 6 Paid Holidays: A through F.

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

LABORERS	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
				H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1	ZONE 2	ZONE 3				
1	$ 5.50	$ 5.95	$ 6.40	.52	.60		.05
2	7.67	8.12	8.57	.52	.60		.05
3	7.95	8.40	8.85	.52	.60		.05
4	8.17	8.62	9.07	.52	.60		.05
5	8.22	8.67	9.12	.52	.60		.05
6	8.47	8.92	9.37	.52	.60		.05

1 - That area encompassed by 0 to 30 driving miles from the Main Post Office in each of the following Cities: Pueblo, La Junta and Trinidad
2 - That area encompassed by 30 to 70 driving miles from the Main Post Office in the above named Cities
3 - That area encompassed by 70 driving miles and over from the Main Post Office in the above named Cities.

LABORERS

Group 1: Watchmen tending Heaters and Pumps

Group 2: Building Construction Laborer

Group 3: Laborers - Underpinning and Shoring eight (8) feet or more below working surface.
Power Tool Operators of all mechanical, air, gas and electrical tools, including Self-propelled Buggies and Cement Finishers Tenders. Laborers preparing and placing of stone or any other aggregate in sand bed to be used as exposed face of Tilt-up Panels.
Burners on Demolition and Welders, Gunnite Nozzleman and Sandblasters.

Group 4: Pipelayers on Building Construction

Group 5: Jackhammer Operator for Underpinning and Shoring over twelve (12) feet below working surface, Bellers and Stemmers on Caisson Work.

Group 6: Tender, Mason and Plaster

POWER EQUIPMENT OPERATORS (Other than for work in Tunnels, Shafts and Raises)	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1*	ZONE 2*				
Group 1	$ 8.75	$9.50	.74	.90	.35	.06
Group 2	9.10	9.85	.74	.90	.35	.06
Group 3	9.45	10.20	.74	.90	.35	.06
Group 4	9.60	10.35	.74	.90	.35	.06
Group 5	9.75	10.50	.74	.90	.35	.06
Group 6	9.90	10.65	.74	.90	.35	.06
(For work in Tunnels, Shafts, and Raises)						
Group 1	8.90	9.65	.74	.90	.35	.06
Group 2	9.25	10.00	.74	.90	.35	.06
Group 3	9.35	10.10	.74	.90	.35	.06
Group 4	9.60	10.35	.74	.90	.35	.06
Group 5	9.75	10.50	.74	.90	.35	.06
Group 6	10.15	10.90	.74	.90	.35	.06

POWER EQUIPMENT OPERATORS
(Other than for work in Tunnels, Shafts and Raises)

Group 1: Air Compressor; Asphalt Screed; Oiler; Brakeman; Drill Operator - smaller than Williams MP and similar; Helper to Heavy Duty Mechanic and/or Welder; Operators of 5 or more light plants, Welding Machines, Generators, single unit conveyor; Pumps; Vacuum Well Point System; Tractor, under 70 HP with or without attachments

Group 2: Conveyor, handling building materials; Ditch Witch and similar Trenching Machine; Fireman or Tank Heater, road; Forklift; Haulage Motor Man; Pugmill; Portable Screening Plant with or without a spray bar; Screening Plants, with classifier; Self-propelled Roller, rubber-tired under 5 tons

Group 3: Asphalt Plant; Backfiller, Bituminous Spreader or Laydown Machine; Cableway Signalman; Caisson Drill; Williams MF, similar and larger; C.M.I. and similar; Concrete Batching Plants; Concrete finish Machine; Concrete Gang Saws on concrete paving; Concrete Mixer, less than 1 yd.; Concrete Placement Pumps, under 8 inches; Distributors, Bituminous Surfaces; Drill, Diamond or Core; Drill Rigs, rotary, churn, or cable tool; Elevating Graders, Equipment Lubricating and service Engineer; Engineer Fireman; Grout Machine; Gunnite Machine; Hoist, 1 drum; Hydraulic Backhoes, wheel mounted under 3/4 yd.; Loader, Barber Green, etc.; Loader up to and including 6 cu. yds.; Machine Doctor; Mechanic; Motor Grader/Blade, rough; Road Stabilization Machine; Rollers, self-propelled, all types over 5 tons; Sandblasting Machine; single unit portable crusher, with or without washer; Tie Tamper, wheel mounted; Tractor, 70 HP and over with or without attachments; Trenching Machine Operator; Welder; Winch on truck

Group 4: Cable operated Crane, track mounted; Cable operated power Shovels, Draglines, Clamshells, and Backhoes, 5 cu. yds. and under; Concrete Mixer over 1 cu. yd.; Concrete Paver 34E or similar; Concrete Placement Pumps, 8 inches and over; Crane, 50 tons and under; Hoist, 2 drums; Hydraulic Backhoe, 3/4 yd. and over; Loader, over 6 cu. yds.; Mechanic-welder, heavy duty; Mixer mobile; Motor Grader/blade, finish; Multiple unit portable Crusher, with or without washer; Piledriver; Scrapers, single bowl under 40 cu. yds.; Self-propelled Hydraulic Crane; Tractor with sideboom; Truck mounted Hydraulic Crane

POWER EQUIPMENT OPERATORS (Cont'd)
(Other than for work in Tunnels, Shafts and Raises)

Group 5: Cable operated power Shovels, Draglines, Clamshells and Backhoes over 5 cu. yds.; Crane, over 50 tons carrier mounted; Derrick; Electric rail type Tower Crane; Hoist, 3 drum or more; Quad Nine and similar push unit; Scrapers - single bowl including pups 40 cu. yds. and tandem bowls and over

Group 6: Cableway; Climbing Tower Crane; Crawler or truck mounted Tower Crane; Wheel Excavator, Tower Crane, truck type

POWER EQUIPMENT OPERATORS (Cont'd)
(For work in Tunnels, Shafts and Raises)

Group 1: Brakeman

Group 2: Motorman

Group 3: Compressor (900 CFM and over) serving Tunnels, Shafts and Raises

Group 4: Air Tractors; Grout Machine; Gunnite Machine; Jumbo Form; Mechanic; Welder

Group 5: Concrete Placement Pumps, 8" and over discharge; Mechanic-Welder, heavy duty; Mucking Machines and Front End Loaders, underground; Slusher; Mine Hoist Operator

Group 6: Mole

TRUCK DRIVERS	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1*	ZONE 2*				
Group 1	$ 8.15	$ 8.65	.74	.40	.30	
Group 2	8.25	8.75	.74	.40	.30	
Group 3	8.35	8.85	.74	.40	.30	
Group 4	8.40	8.90	.74	.40	.30	
Group 5	8.45	8.95	.74	.40	.30	
Group 6	8.50	9.00	.74	.40	.30	
Group 7	8.55	9.05	.74	.40	.30	
Group 8	8.60	9.10	.74	.40	.30	
Group 9	8.70	9.20	.74	.40	.30	
Group 10	8.75	9.25	.74	.40	.30	
Group 11	8.85	9.35	.74	.40	.30	
Group 12	9.00	9.50	.74	.40	.30	
Group 13	9.05	9.55	.74	.40	.30	
Group 14	9.15	9.65	.74	.40	.30	
Group 15	9.25	9.75	.74	.40	.30	
Group 16	9.35	9.85	.74	.40	.30	
Group 17	9.45	9.95	.74	.40	.30	
Group 18	9.65	10.15	.74	.40	.30	

TRUCK DRIVERS

Group 1: Pickups; Helpers; Scalemen; Checkers; Spotters; Dumpmen

Group 2: Dump Trucks, to and including 6 cu. yds.; Sweepers; Flat Rack, single axle; Liquid and Bulk Tankers, single axle; Warehouse men; Washers; Greasemen; Servicemen; Ambulance Drivers

Group 3: Dump Trucks, over 6 cu. yds. to and including 14 cu. yds.; Flat Rack, tandem axle; Battery Men; Mechanics' Helpers; Material Checkers; Cardex Men; Expeditors; Man Haul Shuttle Truck or Bus

Group 4: Straddle Truck; Lumber Carrier; Liquid and Bulk Tankers, tandem axle

Group 5: Fork Lift Driver; Fuel Truck; Grease Truck; Combination Fuel and Grease

Group 6: Distributor Truck Driver; Cement Mixer, Agitator Truck to and including 10 cu. yds.; Liquid and Bulk Tankers, semi or combination

Group 7: Multi-purpose Truck; Speciality and Hoisting

Group 8: Dump Trucks, over 14 cu. yds. to and including 29 cu. yds.; High Boy, Low Boy, Floats, semi; Cab operated Distributor Truck Driver, semi; Liquid and Bulk Tankers, Euclid, Electric or similar; Truck Drivers, Dumptor type Youngbuggy, Jumbo and similar type equipment

Group 9: Truck Driver, Snow Plow

Group 10: Cement Mixer, Agitator Truck, over 10 cu. yds., to and including 15 cu. yds.

Group 11: Dump Trucks, over 29 cu. yds. to and including 39 cu. yds.

Group 12: Cement Mixer, Agitator Truck, over 15 cu. yds.

Group 13: Dump Trucks, over 39 cu. yds. to and including 54 cu. yds.; Tireman

Group 14: Mechanic

Group 15: Dump trucks, over 54 cu. yds. to and including 79 cu. yds.

Group 16: Heavy Duty Diesel, Mechanic, Body Men, Welders or Combination Men

Group 17: Dump Trucks, over 75 cu. yds. to and including 104 cu. yds.

Group 18: Dump Trucks, over 104 cu. yds.

*ZONE DESCRIPTIONS

Power Equipment Operators and Truck drivers

A. Counties entirely within Zone 1:
Otero Pueblo

B. Portions of Las Animas County which are included within Zone 1, as follows:
All of Las Animas County lying west of the Township line between R59W and R60W of the 7th Guide Meridian West.

C. Portions of Las Animas County which are included within Zone 2, as follows:
All of Las Animas County lying East of the Township line between R59W and R60W of the 7th Guide Meridian West.

SUPERSEDEAS DECISION

STATE: Colorado

COUNTIES: Delta, Garfield, Gunnision, Mesa, Montrose and Pitkin

DECISION NUMBER: C078-5111

DATE: Date of Publication

Supersedes Decision No. C077-5084 dated September 23, 1977, in 42 FR 48627

DESCRIPTION OF WORK: Building Construction (does not include single family homes and garden type apartments up to and including 4 stories)

BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 11.44	.57	$ 1.20		
BOILERMAKERS	10.30	.85	1.00		.02
BRICKLAYERS; Stonemasons:					
Pitkin County	9.70	.60	.70	.25	.05
Remaining Counties	10.05	.85	.70		.05
CARPENTERS:					
Post Office basing points in the Cities of Leadville, Fort Collins, Glenwood Springs, Grand Junction, Gunnison and Montrose					
Zone I (0-30 miles from nearest basing point)	9.27	.80	.90	.75	.07
Zone II (30-60 miles from nearest basing point)	9.77	.80	.90	.75	.07
Zone III 960 miles and over from nearest basing point)	10.02	.80	.90	.75	.07
CEMENT MASONS:					
Cement Masons	10.48	.52	1.15		.11
Working with composition materials and color	10.98	.52	1.15		.11
Working on scaffold, swing stage or temporary platform over 25'	10.73	.52	1.15		.11
DRYWALL INSTALLERS	9.29	.78	.85	.65	.07
ELECTRICIANS:					
Electricians	11.89	.72	3%+.25		1⅓%
Cable Splicers	12.14	.72	3%+.25		1⅓%
ELEVATOR CONSTRUCTORS	11.14	.745	.35	4%+a	.02
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.745	.35	4%+a	.02
GLAZIERS	12.15				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
IRONWORKERS:					
Structural, Ornamental and Reinforcing	$ 10.95	.94	$ 1.25		.12
LATHERS	11.09				.01
MARBLE & TILE SETTERS, TERRAZZO WORKERS	10.26	.90	.85		.04
MILLWRIGHTS	10.86	.80	.85	6%	.13
PAINTERS:					
Brush, Roller and Drywall Finishers	11.15	.70	1.00		.07
Paperhangers, Spray, Swing Stage	11.75	.70	1.00		.07
PLASTERERS	10.14				.01
PLUMBERS	12.25	.80	1.05		.10
ROOFERS	9.41	.52	.40		
SHEET METAL WORKERS	11.95	3%+.64	1.41		.09
SOFT FLOOR LAYERS	10.38	.40	.75	.30	.10
SPRINKLER FITTERS	12.10	.75	1.05		.08
TILE, MARBLE & TERRAZZO HELPERS:					
Helpers	7.85	.90	.85	.50	
Floor Grinders	8.00	.90	.85	.50	
Base Grinders	8.55	.90	.85	.50	

FOOTNOTE:

a. Employer contributes 4% of basic hourly rate for over 5 years' service and 2% basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit. 6 Paid Holidays: A through F.

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independnece Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

LABORERS	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
				H & W	Pensions	Vacation	Educatic and/or Appr. Tr
	ZONE 1	ZONE 2	ZONE 3				
Group 1	$ 5.50	$ 5.95	$ 6.40	.52	.60		.0
Group 2	7.67	8.12	8.57	.52	.60		.0
Group 3	7.95	8.40	8.85	.52	.60		.0
Group 4	8.17	8.62	9.07	.52	.60		.0
Group 5	8.22	8.67	9.12	.52	.60		.0
Group 6	8.47	8.92	9.37	.52	.60		.0

ZONE 1 - That area encompassed by 0 to 30 driving miles from the Main Post Office in each of the following Cities: Aspen, Glenwood Springs, Grand Junction, Gunnison, Montrose, Naturita and Rifle

ZONE 2 - That area encompassed by 20 to 70 driving miles from the Main Post Office of the above named Cities.

ZONE 3 - That area encompassed by 70 driving miles and over from the Main Post Office of the above named Cities.

LABORERS

Group 1: Watchmen tending Heaters and Pumps

Group 2: Building Construction Laborers

Group 3: Laborers - Underpinning and Shoring eight (8) feet or more below working surface.
Power Tool Operators of all mechanical, air, gas and electrical tools, including Self-propelled Buggies and Cement Finishers Tenders. Laborers preparing and placing of stone or any other aggregate in sand bed to be used as exposed face of Tilt-up Panels.
Burners on Demolition and Welders, Gunnite Nozzleman and Sandblasters.

Group 4: Pipelayers on Building Construction

Group 5: Jackhammer Operator for Underpinning and Shoring over twelve (12) feet below working surface, Bellers and Stemmers on Caisson Work.

Group 6: Tender, Mason and Plaster

POWER EQUIPMENT OPERATORS (Other than for work in Tunnels, Shafts and Raises)	Basic Hourly Rates ZONE 1*	Basic Hourly Rates ZONE 2*	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$ 8.75	$9.50	.74	.90	.35	.06
Group 2	9.10	9.85	.74	.90	.35	.06
Group 3	9.45	10.20	.74	.90	.35	.06
Group 4	9.60	10.35	.74	.90	.35	.06
Group 5	9.75	10.50	.74	.90	.35	.06
Group 6	9.90	10.65	.74	.90	.35	.06
(For work in Tunnels, Shafts, and Raises)						
Group 1	8.90	9.65	.74	.90	.35	.06
Group 2	9.25	10.00	.74	.90	.35	.06
Group 3	9.35	10.10	.74	.90	.35	.06
Group 4	9.60	10.35	.74	.90	.35	.06
Group 5	9.75	10.50	.74	.90	.35	.06
Group 6	10.15	10.90	.74	.90	.35	.06

POWER EQUIPMENT OPERATORS
(Other than for work in Tunnels, Shafts and Raises)

Group 1: Air Compressor; Asphalt Screed; Oiler; Brakeman; Drill Operator - smaller than Williams MF and similar; Helper to Heavy Duty Mechanic and/or Welder; Operators of 5 or more light plants, Welding Machines, Generators, single unit conveyor; Pumps; Vacuum Well Point System; Tractor, under 70 HP with or without attachments

Group 2: Conveyor, handling building materials; Ditch Witch and similar Trenching Machine; Fireman or Tank Heater, road; Forklift; Haulage Motor Man; Pugmill; Portable Screening Plant with or without a spray bar; Screening Plants, with classifier; Self-propelled Roller, rubber-tired under 5 tons

Group 3: Asphalt Plant; Backfiller, Bituminous Spreader or Laydown Machine; Cableway Signalman; Caisson Drill; Williams MF, similar and larger; C.M.I. and similar; Concrete Batching Plants; Concrete finish Machine; Concrete Gang Saws on concrete paving; Concrete Mixer, less than 1 yd.; Concrete Placement Pumps, under 8 inches; Distributors, Bituminous Surfaces; Drill, Diamond or Core; Drill Rigs, rotary, churn, or cable tool; Elevating Graders, Equipment Lubricating and service Engineer; Engineer Fireman; Grout Machine; Gunnite Machine; Hoist, 1 drum; Hydraulic Backhoes, wheel mounted under 3/4 yd.; Loader, Barber Green, etc.; Loader up to and including 6 cu. yds.; Machine Doctor; Mechanic; Motor Grader/Blade, rough; Road Stabilization Machine; Rollers, self-propelled, all types over 5 tons; Sandblasting Machine; single unit portable crusher, with or without washer; Tie Tamper, wheel mounted; Tractor, 70 HP and over with or without attachments; Trenching Machine Operator; Welder; Winch on truck

Group 4: Cable operated Crane, track mounted; Cable operated power Shovels, Draglines, Clamshells, and Backhoes, 5 cu. yds. and under; Concrete Mixer over 1 cu. yd.; Concrete Paver 34E or similar; Concrete Placement Pumps, 8 inches and over; Crane, 50 tons and under; Hoist, 2 drums; Hydraulic Backhoe, 3/4 yd. and over; Loader, over 6 cu. yds.; Mechanic-welder, heavy duty; Mixer mobile; Motor Grader/blade, finish; Multiple unit portable Crusher, with or without washer; Piledriver; Scrapers, single bowl under 40 cu. yds.; Self-propelled Hydraulic Crane; Tractor with sideboom; Truck mounted Hydraulic Crane

POWER EQUIPMENT OPERATORS (Cont'd)
(Other than for work in Tunnels, Shafts and Raises)

Group 5: Cable operated power Shovels, Draglines, Clamshells and Backhoes over 5 cu. yds.; Crane, over 50 tons carrier mounted; Derrick; Electric rail type Tower Crane; Hoist, 3 drum or more; Quad Nine and similar push unit; Scrapers - single bowl including pups 40 cu. yds. and tandem bowls and over

Group 6: Cableway; Climbing Tower Crane; Crawler or truck mounted Tower Crane; Wheel Excavator, Tower Crane, truck type

POWER EQUIPMENT OPERATORS (Cont'd)
(For work in Tunnels, Shafts and Raises)

Group 1: Brakeman

Group 2: Motorman

Group 3: Compressor (900 CFM and over) serving Tunnels, Shafts and Raises

Group 4: Air Tractors; Grout Machine; Gunnite Machine; Jumbo Form; Mechanic; Welder

Group 5: Concrete Placement Pumps, 8" and over discharge; Mechanic-Welder, heavy duty; Mucking Machines and Front End Loaders, underground; Slusher; Mine Hoist Operator

Group 6: Mole

TRUCK DRIVERS	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1*	ZONE 2*				
Group 1	$ 8.15	$ 8.65	.74	.40	.30	
Group 2	8.25	8.75	.74	.40	.30	
Group 3	8.35	8.85	.74	.40	.30	
Group 4	8.40	8.90	.74	.40	.30	
Group 5	8.45	8.95	.74	.40	.30	
Group 6	8.50	9.00	.74	.40	.30	
Group 7	8.55	9.05	.74	.40	.30	
Group 8	8.60	9.10	.74	.40	.30	
Group 9	8.70	9.20	.74	.40	.30	
Group 10	8.75	9.25	.74	.40	.30	
Group 11	8.85	9.35	.74	.40	.30	
Group 12	9.00	9.50	.74	.40	.30	
Group 13	9.05	9.55	.74	.40	.30	
Group 14	9.15	9.65	.74	.40	.30	
Group 15	9.25	9.75	.74	.40	.30	
Group 16	9.35	9.85	.74	.40	.30	
Group 17	9.45	9.95	.74	.40	.30	
Group 18	9.65	10.15	.74	.40	.30	

TRUCK DRIVERS

Group 1: Pickups; Helpers; Scalemen; Checkers; Spotters; Dumpmen

Group 2: Dump Trucks, to and including 6 cu. yds.; Sweepers; Flat Rack, single axle; Liquid and Bulk Tankers, single axle; Warehouse men; Washers; Greasemen; Servicemen; Ambulance Drivers

Group 3: Dump Trucks, over 6 cu. yds. to and including 14 cu. yds.; Flat Rack, tandem axle; Battery Men; Mechanics' Helpers; Material Checkers; Cardex Men; Expeditors; Man Haul Shuttle Truck or Bus

Group 4: Straddle Truck; Lumber Carrier; Liquid and Bulk Tankers, tandem axle

Group 5: Fork Lift Driver; Fuel Truck; Grease Truck; Combination Fuel and Grease

Group 6: Distributor Truck Driver; Cement Mixer, Agitator Truck to and including 10 cu. yds.; Liquid and Bulk Tankers, semi or combination

Group 7: Multi-purpose Truck; Speciality and Hoisting

Group 8: Dump Trucks, over 14 cu. yds. to and including 29 cu. yds.; High Boy, Low Boy, Floats, semi; Cab operated Distributor Truck Driver, semi; Liquid and Bulk Tankers, Euclid, Electric or similar; Truck Drivers, Dumptor type Youngbuggy, Jumbo and similar type equipment

Group 9: Truck Driver, Snow Plow

Group 10: Cement Mixer, Agitator Truck, over 10 cu. yds., to and including 15 cu. yds.

Group 11: Dump Trucks, over 29 cu. yds. to and including 39 cu. yds.

Group 12: Cement Mixer, Agitator Truck, over 15 cu. yds.

Group 13: Dump Trucks, over 39 cu. yds. to and including 54 cu. yds.; Tireman

Group 14: Mechanic

Group 15: Dump trucks, over 54 cu. yds. to and including 79 cu. yds.

Group 16: Heavy Duty Diesel, Mechanic, Body Men, Welders or Combination Men

Group 17: Dump Trucks, over 75 cu. yds. to and including 104 cu. yds.

Group 18: Dump Trucks, over 104 cu. yds.

ZONE DEFINITIONS

Power Equipment Operators and Truck Drivers

A. Counties entirely within Zone 1:
Delta Garfield Mesa

B. Counties entirely within Zone 2:
Gunnison Pitkin

C. Legal description of the portion of Montrose County which is included within Zone 1, as follows:

All of Montrose County lying north of the North line of Ouray County and said North line extended West to the Township line between R11W and R12W, said part lying East of said Township line of the New Mexico Principal Meridian

D. Legal description of the portion of Montrose County which is included within Zone 2, as follows:

All of Montrose County except that part lying north of the North line of Ouray County and said North line extended West of said Township line between R11W and R12W, said point being East of said Township line of the New Mexico Principal Meridian

SUPERSEDEAS DECISION

STATE: Florida COUNTY: Pinellas
DECISION NO.: FL78-1062 DATE: Date of Publication
Supersedeas Decision No.: FL77-1144 dated November 25, 1977 in 42 FR 60554
DESCRIPTION OF WORK: Building Construction (does not include single family homes and garden type apartments of four stories or less).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
AIR CONDITIONING & HEATING MECHANIC	$ 6.07				
BRICKLAYERS/BLOCK LAYERS	7.95				
CARPENTERS	6.51				
CEMENT MASONS	6.54				
ELECTRICIANS	5.92				
ELEVATOR CONSTRUCTORS	9.785				
GLAZIERS	6.13				
IRONWORKERS	6.39				
LABORERS	4.36				
LATHERS	7.39				
PAINTERS	5.27				
PLASTERERS	7.44				
PLUMBERS	7.77				
ROOFERS	5.81				
SHEET METAL WORKERS	5.47				
SOFT FLOOR LAYERS	5.25				
SPRINKLER FITTERS	6.96				
TILE SETTERS	6.86				
POWER EQUIPMENT OPERATORS:					
BACKHOE	5.00				
BULLDOZER	5.25				
COMPACTOR	9.185	.625	.60		
CRANE	10.89	.65	.60		.05
GRADER	4.76				
PILEDRIVER	7.00				

SUPERSEDEAS DECISION

STATE: Louisiana PARISHES: Bossier, Caddo & Calcasieu
DECISION NO.: LA78-4072 DATE: Date of Publication
Supersedes Decision No. LA78-4013, dated February 17, 1978, in 43 FR 7125.
DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden type apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
Bossier & Caddo Parishes	$ 10.43	.40	.76		.03
Calcasieu Parish	10.595	.525	.90		.04
BOILERMAKERS	10.55	.80	1.00		.02
BRICKLAYERS & STONEMASONS:					
Bossier & Caddo Parishes	9.90	.40	.45		
Calcasieu Parish	10.85	.53	.30		.02
CARPENTERS:					
Bossier & Caddo Parishes:					
Carpenters	9.30	.40	.35		.04
Millwrights	10.05	.40	.35		.04
Piledrivermen	9.55	.40	.35		.04
Calcasieu Parish					
Carpenters & piledrivermen	10.05	.50	.33		.07
Millwrights	11.245				.05
CEMENT MASONS:					
Bossier & Caddo Parishes	9.05	.35			
Calcasieu Parish	9.45				
ELECTRICIANS:					
Bossier & Caddo Parishes:					
Electricians	11.40	1.00	3%		1%
Cable splicers	11.90	1.00	3%		1%
Calcasieu Parish:					
New & old single or multiple family residences and apartment complexes, not to exceed 12 units, 2 story walk-up.	6.25	.35	3%+.20		3/10%
Other work:					
Electricians	12.30	.35	3%+.20		1/10%
Cable splicers	12.55	.35	3%+.20		1/10%
ELEVATOR CONSTRUCTORS:					
Bossier & Caddo Parishes:					
Mechanics	9.595	.745	.35	4%+a+b	.02
Helpers	70%JR	.745	.35	4%+a+b	.02
Helpers (Probationary)	50%JR				
Calcasieu Parish:					
Mechanixs	9.76	.545	.35	4%+a+b	.02
Helpers	70%JR	.545	.35	4%+a+b	.02
Helpers (Probationary)	50%JR				
GLAZIERS:					
Bossier & Caddo Parishes	8.28		.30		.04
Calcasieu Parish	9.65				.02
IRONWORKERS:					
Bossier & Caddo Parishes	10.75	.45	.90		.06
Calcasieu Parish	10.70	.35	.60		.05

DECISION NO. LA78-4072

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
Bossier & Caddo Parishes:					
GROUP 1 - Building laborers	$ 6.50	.20	.10		.05
GROUP 2 - Mason tenders, plasterer tenders; asphalt rakers, asphalt smoothers	6.60	.20	.10		.05
GROUP 3 - Mortar mixers	6.65	.20	.10		.05
GROUP 4 - Air jack operators, vibrator operators; Sewer pipe layers, sewer pipe wipers	6.70	.20	.10		.05
Calcasieu Parish:					
GROUP 1 - Building & general laborer; tenders (carpenter, plaster, cement finisher, mason); tank & vessel cleaners	7.80	.20	.10		.05
GROUP 2 - Air tool operator (except jackhammer); interior of closed tanks & vessles power equipment	7.90	.20	.10		.05
GROUP 3 - Mortar mixers & jackhammer operators	7.95	.20	.10		.05
GROUP 4 - Blasterers	8.76	.20	.10		.05
GROUP 5 - Blaster helpers; concrete cutters behind paving machines & puddlers; form setters & lines asphalt worker	8.32	.20	.10		.05
GROUP 6 - Wipe joints, laying pipe & tile from pumpcrete	8.16	.20	.10		.05
GROUP 7 - Interior of closed tanks & vessels manually	7.85	.20	.10		.05
LATHERS:					
Bossier & Caddo Parishes	10.75				
Calcasieu Parish	10.585	.30			.01
MARBLE SETTERS:					
Bossier & Caddo Parishes	8.85	.30			
Calcasieu Parish	10.85	.53	.30		.02
PAINTERS:					
Bossier & Caddo Parishes:					
GROUP 1 - Painters, tape & float & paperhangers; stage, window jacks & structural steel	8.85	.40	.30		.05
GROUP 2 - Stage, window jacks & structural steel over 30 ft.	9.10	.40	.30		.05

DECISION NO. LA78-4072

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 3 - Stage, window jacks & structural steel over 75ft.	$ 9.35	.40	.30		.05
GROUP 4 - Sandblasting, spray	9.45	.40	.30		.05
Calcasieu Parish:					
GROUP 1 - Brush, wood or wall; rollers	10.36				
GROUP 2 - Brush on steel, buffer on wood or wall	10.485				
GROUP 3 - Paperhanging, taping & floating	10.56				
GROUP 4 - Spray, wood & wall	10.705				
GROUP 5 - Steeplejack, sand-Blasting, spider operator, rubberizing & proflexing, steam jennies, spray on steel	10.845				
PLASTERERS:					
Bossier & Caddo Parish	9.75			1.00	
Calcasieu Parish	10.07				
PLUMBERS & PIPEFITTERS:					
Bossier & Caddo Parishes	10.14	.50	.60	.95	.09
Calcasieu Parish	11.15	.67	.72		.08
ROOFERS:					
Bossier & Caddo Parishes:					
Roofers	9.10		.20		.02
Kettlemen	6.31		.20		.02
Calcasieu Parish:					
Roofers	9.73		.10		
SHEET METAL WORKERS:					
Bossier & Caddo Parishes	6.46	3%+.40			.12
Calcasieu Parish	10.97	.40	.27		.10
SOFT FLOOR LAYERS:					
Bossier & Caddo Parishes	9.30	.40	.35		.04
Calcasieu Parish	10.05	.50	.33		.07
SPRINKLER FITTERS	10.80	.75	1.05		.08
TERRAZZO WORKERS:					
Bossier & Caddo Parishes	8.85	.30			
Calcasieu Parish	10.85	.53	.30		.02
TILE SETTERS:					
Bossier & Caddo Parishes	8.85	.30			
Calcasieu Parish	7.65	.48	.30		.02
TRUCK DRIVERS:					
Bossier & Caddo Parishes:					
GROUP 1 - Pick-up drivers, spotters & dumpers of dirt, gravel, asphalt & rock	5.47				
GROUP 2 - Stake bodies; flat beds (all sizes)	5.55				

DECISION NO. LA78-4072

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS (CONT'D):					
GROUP 3 - Single axle dumps & water trucks; transit mix up to & including 3 yds.	$ 5.80				
GROUP 4 - Tandem axle, dump, batch & water trucks over 3 tons, pick-ups with trailer	5.95				
GROUP 5 - Mississippi wagons, floats, tractor trailers; rubber tired tractors & wobble wheels	6.10				
GROUP 6 - Euclids, lowboys, Dempsey dumpsters, Koehring dumps, five axle trucks, transit mix over 3 yds.; fuel truck	6.30				
Calcasieu Parish:					
GROUP 1 - Teamsters, pick-up drivers	4.91				
GROUP 2 - Stake bodies (all sizes)	5.34				
GROUP 3 - Trucks trailer & dumps over 8 yds.; Mixers on trucks over 3 yds.; Mississippi wagons & Koehring dumpsters & similar dirt moving equipment (up to & including 8 yds.)	5.55				
GROUP 4 - Mixers on trucks up to & including 3 yds.	5.35				
GROUP 5 - Winch trucks	5.45				
GROUP 6 - Dump trucks	5.37				
GROUP 7 - Mississippi wagons & Koehring dumpsters & similar dirt moving equipment over 8 yds.	5.76				

FOOTNOTES:

a - 1st 6 mos. - none; 6 mos. to 5 yrs. - 2%; over 5 yrs. - 4% of basic hourly rate

b - Paid Holidays - A thru G

PAID HOLIDAYS:

A-New Years' Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-the Friday after Thanksgiving Day; G-Christmas Day

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
Calcasieu Parish:					
GROUP 1	$7.43	.65	.48		.05
GROUP 2	7.11	.65	.48		.05
GROUP 3	6.90	.65	.48		.05
GROUP 4	7.71	.65	.48		.05
GROUP 5	10.095	.65	.48		.05
GROUP 6	8.12	.65	.48		.05
GROUP 7	8.80	.65	.48		.05

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP 1 - Scale Operator; Oiler-Driver on Motor Crane; Batch Plant Operator

GROUP 2 - Pumps under 3 inch suction; Mechanic Helper

GROUP 3 - Oiler

GROUP 4 - Fireman

GROUP 5 - Combination Oiler-Compressor; Combination Oiler-Fireman; Asphalt Spreaders; Backhoe (all types); Bulldozers; Cableways; Cherry Pickers (all types); Concrete Mixers (over 1 sack); Cranes; Deck Winch (2 drums or over); Derricks; Ditching or trenching machines (riding type); Draglines; Dredges; Fork Lifts (other than farm type) outside warehouses; Foundation Drill; Front End Loaders (except farm type); Grease Serviceman; Hoist-1 drum (4 stories or more on buildings); Hoist-1 drum (over 40 Ft. on structures other than building); Hoist (2 drum or over); Locomotives (all types); Mechanic; Mixer Plant Operator-Central Mix; Motor Patrols; Piledrivers; Pull Cat; Pump Crete-6" and over discharge; Push Cat; Road Pavers; Rollers (Plant Mix Asphalt); Scrapers; Shovels; Sidebooms; Unit Operator; Welder, Journeyman: Well Point System; Whirleys; Winch Cats (Cat D-4 and over); Winch Truck with A-Frame (5 ton and over); Work Boats-requiring licensed operator

GROUP 6 - Bush Hog; Compressor; Concrete pump-under 6" discharge; Concrete Saw; Deck Winch (1 drum); Distributors; Ditching or trenching machines (non-riding type); Dowel Bar Machine; Farm-type tractors (when used to pull discs, grass cutters, etc.); Hoist-1 drum (under 4 stories on buildings); Hoist-1 drum (40 feet or under on structures other than buildings); Kolum Buff Machines; Mixers (1 sack and under); Motorized street sweepers self-propelled; Pump (3" and over); Test Pump-Internal combustion engine powered; Water Blast Pumps

GROUP 7 - Asphalt Plant Operator; Boom Trucks; Bull Floats; Concrete Spreader; farm Type Front End Loaders; Finishing Machines (Roadway, riding type); Roller (other than plant mix asphalt); Straddle Buggies; Winch Truck with A-Frame (under 5 tons); Work Boat-not requiring licensed operator

SUPERSEDEAS DECISION

STATE: Minnesota
DECISION NUMBER: MN78-2062
COUNTIES: See Below
DATE: Date of Publication
Supersedes Decision No. MN77-2048 dated May 20, 1977 in 42 FR 26157
DESCRIPTION OF WORK: Heavy and Highway Construction

COUNTIES

Aitken	Dakota	Houston	Mower	Stearns
Anoka	Dodge	Itaska	Nicollet	Steel
Benton	Fairbault	Kanabec	Olmsted	St. Louis
Blue Earth	Fillmore	Koochiching	Ramsey	Wabasha
Carlton	Freeborn	Lake	Rice	Waseca
Carver	Goodhue	LeSueur	Scott	Washington
Chisago	Hennepin	Mille Lacs	Sherburne	Winona
Cook		Morrison	Sibley	Wright

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS & PILEDRIVERMEN:					
Counties of Anoka, carver, Chisago, Dakota, Hennepin, Ramsey, Scott & Washington, Sherburne County (North of the Northern Boundary of T-34- o West of the western Boundary of R-27), & Wright County east of & including Minnesota Highway #25	$ 8.21	.40	.30	.50	.02
Counties of Aitkin, Cook, Itaska, Kanabec, Lake, Mille Lacs & St. Louis	8.28	.30		.30	
Carlton County	8.58	.30			
Benton County, the Remainder of Sherburne & Wright Counties, Stearns County east of a north-south line drawn from the Intersection of Stearns, Todd and Morrison Counties	7.47			.75	
Blue Earth County (entire Co. except N.W. corner including cities of Butternut, Judson & Cambria), LeSueur County (West 2/3 of county including Cities of New Sweden, Nicollet, Norseland, North Mankato & St. Peter), Waseca County (N.W. Corner including City of Smithmill), & Sibley County (S.E. corner incl. Cities of Henderson & Rush River	7.32	.30			

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS & PILEDRIVERMEN (CONT'D)					
Rice County, Dodge County (MN portion including Cities of Clermont & West Concord), Goodhue County (Along west border including Cities of Geyon, Denmison, Skyburg, Sogn, Stanton & Wangs), steele County (Entire County except along south border including Cites of Blooming prairie & Ellendale), Waseca County (Entire County except Smithmill in NW corner & along the South border including the cities of Matawan & New Richland) & the Remainder of LeSueur Co.	8.08	.40			
Olmsted County, Fillmore County The vicinity of the Cities of Borne, Concord, Dodge Center, Kasson, Dansville, Eden, Materville & Wasioja), Mower County (N.W. Corner including the city of Racine & Wabasha County (in the vicinity of the Cities of Elgin, Hammond, Millville, Plainview, Conseption, Dunfries, Jarret, South Troy & Theilman	7.88	.40	.20		
Counties of Fairbault, Freeborn, Houston & Winona & the remainder of Dodge, Fillmore, Goodhue, Mower, STeele, Wabasha & Waseca Counties	8.48				
Koochiching County	7.32	.30			
Counties of Morrison, Remainder of Sibley & Stearns Counties	7.62				

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CEMENT MASONS:					
Counties of Anoka, Carver, Chisago, Dakota, Hennepin Kanabec, McLeod, Mills Lacs, Ramsey, Scott, Sherburne, Sibley, Washington & Wright	10.13	.60	.60		
Counties of Aitkin, Carlton, Cook, Lake & St. Louis Co. South of T-55-N	10.73	.30			
Itaska County & St. Louis co. North of T-54-N	10.05	.30			
Koochiching County	10.35	.40	.15		
Morrison County	10.20		.15		
counties of Benton & stearns	9.90		.25		
Counties of Blue earth & Nicollet, LeSueur Co. (East ½ including the Cities of Cleveland, Elysian, Kasato, LeCenter, LeSueur, Lexington, Ottawa, & ST. Thomas), Waseca County (East ½ including the Cities of Alma City, Janesville, Smithmill & Waldorf	10.10				
Fairbault County & Freeborn Counties (West of a line running north & south from Genevia to Gordansville	9.43	.42	.25		
Counties of Rice & Steele, the Remainder of LeSueur & Waseca Counties & Dodge County West of Highway 56	10.10				
Olmsted County, Dodge County (east of Highway 56), & Fillmore Co. east of a line drawn north & south established east of the City of Dodge Center	10.35				
Counties of Houston & Winona & the Remainder of Fillmore Co.	10.10				

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CEMENT MASONS (CONT'D)					
Counties of Goodhue & Wabasha	10.33	.42	.25		
Mower County & the Remainder of Freeborn	9.50	.35	.25		
IRONWORKERS:					
Counties of Anoka, Benton, Blue Earth, Carver, Chisago, Dakota Dodge, Fairbault, Fillmore, Freeborn, Goodhue, Hennepin Houston, LeSueur, Morrison, Mower, Nicollet, Olmsted, Ramsey, Rice, Scott, Sherburne, Sibley, Stearns, Steele, Wabasha, Waseca, Washington, Winona & Wright; Kanabec Co., (excluding north 1/3 of County including cities of Warman, Kruschel & Woodland), Mille Lacs County (excluding NE cor. including cities of Bayview, Opstead, Isle, Wahkun Cove & Vineland), & Pine County (the SW corner including the cities of Pine City, Henriette, Greely, rock Creek & West Rock)	10.85	.75	.60		.02
Counties of Aitkin, Carlton, Cook, Itaska, Koochiching, Lake, St. Louis, Kanabec & Mille Lacs Counties	11.10	.40	.60		.02

DECISION NO. MN78-2062

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINEMEN:					
Counties of Aitkin, Carlton, Cook, Lake, Morrison, Itaska County that portion South of T-55 R-27, Bass Rock Grand Rapids, Trout Lake, T-55 R-23 & that portion of Goodhue & Township South of a Line west from the S.W. of T-55 R-23; St. Louis Co; that portion south of Ault, Ellsburg, Lavell, T-55 R-14, T-55 R-15, T-55 R-18 & T-55 R-21 Townships, Kanabec co. north of Ann Lake, Knife Lake & White Townships; Mille Lacs county north of baily and Mudgett Townships	10.78	4%	6%	11%	1½%
Koochiching County & the Remainder of Itaska & St. Louis Cos.	10.75	4%	6%	11%	1½%
Counties of Chisago, Dakota, Ramsey, Rice & Washington; Remainder of Kanabec & Mille Lacs Cos., Anoka County (Entire County except Anoka, Firdely, Grow & Ramsey Twps.), Goodhue Co. (Entire County (except Pine Island, Minneola, Rosecoe & Zumbrota Twps.), LeSueur County (that portion east of Cleveland, Sharon, Tyrone of Washington Twps.); Sherburne Co. (that portion east of Becker & Santiago Twps; & Wabasha County (Entire Co. excpet Elgin & Plainview Twps.)	10.65	5-3/4%	6%	11%	3/8%
Houston & Winona County	9.97	.45	3%		.5%

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINEMEN (CONT'D)					
Counties of Benton, Blue Earth Carver, Fairbault, Hennepin, Nicollet, Scott, Sibley, Stearns, Waseca, Wright & the Remainder of Anoka, LeSueur & Sherburne Cos.	10.60	7⅛	6%	10%	1½%
Counties of Dodge, Fillmore, Freeborn, Mower, Olmsted, Steele & the Rem. of Goodhue & Wabasha Counties	8.31	.35	1%		.04
PAINTERS:					
Counties of Carlton, Cook, Lake, Koochiching, St. Louis & Itaska					
Brush	9.43	.30	.40		.08
Structural Steel	9.93	.30	.40		.08
Counties of Chisago, Dakota, Ramsey & Washington					
Brush	9.55	.45	.25		.07
Structural Steel	10.05	.45	.25		.07
Counties of Anoka, Carver, Hennepin, Kanabec, Scott and the eastern 2/3 of Sherburne & Wright counties:					
Brush	9.53	.45	.25		.09
Structural Steel	10.03	.45	.25		.09
Counties of Benton, Mille Lacs & Stearns (the western 1/3 of Sherburne & wright Counties) & the soutehrn ½ of Morrison County:					
Brush	5.90				.02
Structural Steel	6.40				.02
Spray	6.90				.02
Aitkin & the southern ½ of Morrison County:					
Brush	9.10				
Structural Steel	9.60				

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PAINTERS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Counties of Dodge, Fairbault, Fillmore, Freeborn, Goodhue, Houston, Mower, Olmsted, Wabasha & Winona:					
Brush	9.50	.37	.25		.08
Spray	10.10	.37	.25		.08
Counties of Blue Earth, Nicollet Sibley, Rice, LeSueur, Steel & Waseca					
Brush	8.80	.40	.10		.07
Spray & Structural STeel	9.30	.40	.10		.07
WELL DRILLING:					
(Construction or Repair of water wells and aprurtenances)					
Metropolitian Area					
Hennepin, Ramsey, Washington, Anoka, Carver, Scott & Dakota Counties; that part of Wright County east of T.H. 25, Sherburne County South of T-34N & East of R-27W & that Part of Chisago Co. South of T-35N					
Field Work					
Driller - Pumpman	9.00				
General - Helper	7.40				
Mechanic - Welder	8.35				
Driver or Service Man	7.40				
Rural Area					
Remainder of Counties					
Field Work					
Driller - Pumpman	9.00				
General Helper	6.50				
Mechanic - welder	7.85				
Driver or Service Man	6.95				

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MINN-9-LAB

LABORERS: Counties of Anoka, Carver, Chisago, Dakota, Hennepin, Ramsey, Scott, Sherburne, Washington & Wright	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	8.25	.45	.45	.40	
CLASS 2	8.35	.45	.45	.40	
CLASS 3	8.40	.45	.45	.40	
CLASS 4	8.50	.45	.45	.40	
CLASS 5	8.60	.45	.45	.40	
CLASS 6	8.60	.45	.45	.40	
CLASS 7	8.65	.45	.45	.40	
CLASS 8	8.68	.45	.45	.40	
CLASS 9	8.70	.45	.45	.40	
CLASS 10	8.88	.45	.45	.40	
CLASS 11	8.93	.45	.45	.40	

CLASS 1 Unskilled Laborer, Drill Runner Helper, Landscape Gardener, Sod Layer & Nurseryman, Powder Monkey, Rein. Steel Lab., Rein. Steel Salamander Heater & Blower Tender Carpenter Tender; Winch Handler

CLASS 2 - Laborer,wwrecking & Demolition; Bit. Batchermen (Stationary Plant); Bricklayer Tender; Cement Handler; Cement Coverman (Batch trucks); Compaction Equip. Shoveler, batchermen Conc., Conc. Vibrator TAmper & Puddler (Paving) Conc. Longitudinal Floatmen; Conduit Layer (w.o wiring); Chipping Hammer, Curb Setter (Stone or Precast Conc.) Kettleman (Bit. or lead); Service connection maker; Power Buggy; Joint Sawer' Squeeze man (Bit. Brick or Block); Stablizing batchermen (Stationary Plant); Stonemasons tender; Drill Runner (Heavy, including Churn Drill)

CLASS 3 - Chainsaw Man, Conc. Mixer (1 bag); Jackhammer Man & Paving Buster; Mortar Mixer' Pipe Handler; Pipe Derrickman (Triped, manual)

CLASS 4 - Bottom Man (Sewer, Water or Gas Trench, more than 8' below starting level of manual work); Tunnel Laborer (ATmospheric pressure) Underpinning work, Caisson Work, other work more than 8' below level of manual work Open ditch work

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LABORERS: (CONT'D)

Class 5 - Bituminous Tamper; Pipelayers; Sand Cushion & Bedmaker
CLASS 6 - Cement Gun (1½ & over); Leadman
CLASS 7 - Nozzlemen (Gunite)
CLASS 8 - Brick or Block Paving Setter
CLASS 9 - Bituminous Raker, Floater & Utility Man
CLASS 10 - Tunnel Man (Air pressure); Tunnel Miner
CLASS 11 - Powderman

MINN-10-LAB

LABORERS: Counties of Itaska and St. Louis Counties North of T-55	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	8.63	.20	.15	.25	
CLASS II	8.73	.20	.15	.25	
CLASS III	8.88	.20	.15	.25	
CLASS IV	8.93	.20	.15	.25	
CLASS V	8.98	.20	.15	.25	
CLASS VI	9.03	.20	.15	.25	
CLASS VII	9.13	.20	.15	.25	
CLASS VIII	9.23	.20	.15	.25	

CLASS I - Unskilled Laborers, Laborers; wrecking & demolition; Bricklayer tender, drill runner helper, Landscape gardner, Sod layer & nurseryman Pipehandler (water, gas, cast iron); Salamander Heater & blower tender; Carpenter tender; Stonemasons tender
CLASS II - BitUminous Shoveler, bottom man (sewer, water or gas trench), Cement hnadler (bulk or bag); Chain saw man, compaction equipment (hand operated); Concrete mixer operator (1 bag), Concrete Shoveler, tamper & puddler (paving) Concrete Vibrator, Conduit layers (w/o wiring); Dumper (wagon, truck, etc.), Formsetter (municipal type curb & side walk) Formsetter (pavement); Jackhammer man & paving busters, Kettleman (Bituminous or lead), Mortar mixer, Power buggy, Joint drawer, tunnel laborer (atmospheric pressure)
CLASS III - Bituminous Tamper, Cofferdam work, Caisson work
CLASS IV - Drill Runner (Heavy, including churn drill)
CLASS V - Bituminous Raker, Floater & Utility Man, Pipelayers (sewer, water, gas); Leadman (Gunite)
CLASS IV - Nozzleman
CLASS VII - Powderman
CLASS VIII - Tunnel miner

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MINN-11-LAB

LABORERS: COUNTIES OF BENTON, KANABEC, MILLE LACS & STEARNS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	7.75	.40	.35	.40	
CLASS 2	7.80	.40	.35	.40	
CLASS 3	7.85	.40	.35	.40	
CLASS 4	7.90	.40	.35	.40	
CLASS 5	8.10	.40	.35	.40	
CLASS 6	8.15	.40	.35	.40	
CLASS 7	8.20	.40	.35	.40	
CLASS 8	8.25	.40	.35	.40	

CLASS 1 - Bricklayer Tender, Carpenter, Drill Runner Helper, Laborers-Wrecking & Demolition, Landscape Gardner, Pipe Handler (water, Gas & Cast Iron); Salamander Heater & Blower Tender, Sod Layer & Nurseryman; Stonemasons Tenders; Unskilled Laborers
CLASS 2 - Form Setter (Municpal Type Curb & Sidewalk, Form Setter (Pavement) coverman (Batch Trucks); Cement Handler (Bulk or Bag); Chain Saw Man; compaction equipment (Hand operated); Concrete Mixer (1 bag); Concrete Shoveler Tamper & Puddler (Paving); Concrete Vibrator; Conduit Layers (w/o wiring); Drill Runner (wagon, truck, etc.); Jackhammerman, Joint Sawer, Kettleman (Bituminous or Lead); Mortar mixers, Paving Buster, Power Buggy, Tunnel Laborer (Atmospheric pressure)
CLASS 4 - Bituminous Raker, Floater & Utility Man;, Caisson work, Cofferdam
CLASS 5 - Leadman
CLASS 6 - Gunnite
CLASS 7 - Pipelayer (Sewer, water & Gas)
CLASS 8 - Powderman, Tunnel Miner

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MINN-12-LAB

LABORERS: Counties of Blue Earth, Dodge, Fairbault, Fillmore, Freeborn, Goodhue, Houston, LeSueur. Mower, Nicholett, Olmsted, Rice, Steele, Wabasha, Waseca & Winona	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	8.55	.20	.15		
CLASS 2	8.65	.20	.15		
CLASS 3	8.70	.20	.15		
CLASS 4	8.80	.20	.15		
CLASS 5	8.90	.20	.15		
CLASS 6	8.95	.20	.15		
CLASS 7	9.00	.20	.15		
CLASS 8	9.05	.20	.15		

CLASS 1 - Unskilled Laborers, Bricklayer & Carpenter Tenders; Drill Runner Helper; Laborers-Wrecking & Demolition; Landscape Gardner; Pipe Handler (Water, Gas, Cast Iron); Salamander Heater & blower Tender; Sod Layer & Nurseryman, Stonemason tender.
CLASS 2 - Bituminous shoveler; Bottom Man (Sewer, Water or Gas Trench); Cement Coverman (Batch Trucks); Cement Handler (Bulk or bag) Chain Saw Shoveler; Tamper & Puddler (Paving); Concrete Vibrator; Condit Layers (w/o wiring); Drill Runner (Heavy, incl. Churn Drill) Dumper (wagon, Truck Jackhammerman; Joint Sawyer, Kettlemen (Bituminous or Lead); Mortar Mixers; Paving Buster; Power Buggy; Tunnel Laborer (Atmospheric Pressure).
CLASS 3 - Bituminous Tamper
CLASS 4 - Bituminous Raker; Floater & Utility Man; Caisson Work; Cofferdam
CLASS 5 - Leadman
CLASS 6- Nozzle (Gunnite)
CLASS 7 - Pipelayer (Sewer, Water & Gas)
CLASS 8 - Powderman

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MINN-13-LAB

LABORERS Counties of Aitkin, Koochiching, Morrison, & Sibley	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	7.35	.20	.15		
CLASS 2	7.45	.20	.15		
CLASS 3	7.60	.20	.15		
CLASS 4	7.70	.20	.15		
CLASS 5	7.75	.20	.15		
CLASS 6	7.80	.20	.15		
CLASS 7	7.85	.20	.15		
CLASS 8	7.50	.20	.15		

CLASS 1 - Skilled Laborers, Bricklayer & carpenter Tenders; Drill Runner Helpers; Laborers Wrecking & demolition, Landscape, Pipe Handler (Water, Gas, Cast Iron), Salamander Heater & Blower Tender, Sod Layer & Nurseryman; Stonemason Tender
CLASS 2 - Bituminous Shoveler, Bottom Man (Sewer, Water or gas Trench), Cement Coverman (Batch Trucks); Cement Handler (Bulk or bag); Chain Saw Man, Compaction equipment (hand operated), Concrete mixer (1 bag); Concrete Shoveler, Tamper & Puddler (paving), Concrete vibrator, Conduit layers (w/o wiring); Drill runner (Heavy, incl. Churn driver Dumper (wagon truck, etc.); Jackhammerman, Joint Sawer, Kettleman (Bituminous or Lead), Mortar Mixer Paving Buster, Power Buggy; Tunnel Laborer (Atmospheric pressure)
CLASS 3 - form setters (Municipal type curb & Sidewalk) formsetter (pavement)
CLASS 4 - Bituminous Tamper, caisson work & cofferdam
CLASS 5 - Bituminous raker, floater & utility man; Leadman
CLASS 6 - Nozzleman (Gunnite)
CLASS 7 - Pipelayer, (Sewer, water & Gas)
CLASS 8 - Powderman, Tunnel Miner

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MINN-14-LAB

LABORERS: Counties of Carlton, Cook, Lake, & St. Louis - South at T-55	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	8.18	.30	.35	.40	
CLASS II	8.28	.30	.35	.40	
CLASS III	8.43	.30	.35	.40	
CLASS IV	8.48	.30	.35	.40	
CLASS V	8.53	.30	.35	.40	
CLASS VI	8.58	.30	.35	.40	
CLASS VII	8.68	.30	.35	.40	
CLASS VIII	8.78	.30	.35	.40	

CLASS I - Unskilled Laborers, Laborers; Wrecking & Demolition; Bricklayer tender, Drill runner helper, Landscape Gardner, Sod Layer & Nurseryman Pipehandler (water, gas, cast iron); Salamander heater & blower Tender; Carpenter Tender; Stonemasons Tender

CLASS II - Bituminous Shoveler, Bottom man (sewer, water or gas trench), Cement handler (bulk or bag); Chain saw man, compaction equipment (hand operated); Concrete mixer operator (1 bag), Concrete Shoveler, Tamper & puddler (paving) Concrete Vibrator, Conduit layers (w/o wiring); Dumper (wagon, truck, etc.), Formsetter (municipal type curb & side walk) Formsetter (pavement); Jackhammer man & paving busters, Kettleman (Bituminous or lead), Mortar mixer, Power buggy, Joint darwer, tunnel laborer (atmospheric pressure)

CLASS III - Bituminous Tamper, Cofferdam work, Caisson work

CLASS IV - Drill Runner (Heavy, including churn drill)

CLASS V - Bituminous Raker, Floater & Utility Man, Pipelayers (sewer, water, gas); Leadman (Gunite)

CLASS IV - Nozzleman

CLASS VII - Powderman

CLASS VIII - Tunnel Miner

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MINN-7M-PEO

POWER EQUIPMENT OPERATORS: ZONE 1 Counties of Anoka, Carver, Cook Dakota, Hennepin, Lake, Ramsey, St. Louis, Scott & Washington, Sherburne County south of the northern boundary of T-33-N and east of the west ern boundary of R-27-W, Wright county east of and including Highway #25, Chisago County south of the northern boundary of T-34-N and that part consisting substantially of the cities of Thompson, Colquet, Scanlon & Carlton	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	14.75	.55	.50		
GROUP 2	11.46	.55	.50		
GROUP 3	11.15	.55	.50		
GROUP 4	11.02	.55	.50		
GROUP 5	10.93	.55	.50		
GROUP 6	10.15	.55	.50		
GROUP 7	9.75	.55	.50		

GROUP 1 - Helicopter Pilot

GROUP 2 Crane with over 135' Boom, excluding jib, Dragline and/or other similar equipment w/shovel type controls 3 cu. yds. & over Mfg. rates capacity

GROUP 3 - Cableway Op., concrete Mixer, Stationary Plant over 34E, Derrick, Dragline and/or similar equipment with shovel type control up to 3cu. yds. Mfg. rates capacity, Dredge Operator or Engineer, Dredge Oper. (power) & Yds. & over, Grader or Motor Patrol Ffnishing earth & Bituminous, Locomotive crane Operator, Master Mechanic, Mixer (paving) Concrete Paving Op., Road Mile., Op., incl. power supply, Mucking Mach., incl. mucking operations Conway or similar type, Refrigeration Plant Engineer, Tandem Scraper, Tractor Op., (Boom Type), Truck crane Op., Tugboat Op. 100 HP & over

GROUP 4 - Dual Tractor Op., Elevating Grader Op., Pumpcrete Op., Scraper Op., Struck Capacity 32 cu. yds. & over, self-propelled. Travelling Soil

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POWER EQUIPMENT OPERATORS (CONT'D)

GROUP 4 (Cont'd)

Stabilizer

GROUP 5 - Air track Rock Drill, Asphalt Bituminous Stabilizer Plant Op., Crushing Plant Op., or Gravel Washing, Crushing and Screening Plant Op., Dope Machine Op., Drill Rigs, Heavy Rotary or Churn or Cable Drill, Engineer in charge of Plant requiring First Class License, Fork Lift or Lumber Stacker, Front End Loader Op., Loader Op., over 1 cu. yds., Hoist Engineer, Hydraulic Tree Planter, Lanucherman, Locomotive, all types, Mechanic or welder, Multiple machines, such as air compressors, welding machines, generators, pumps or crane oilers, paving breaker or tamping machines op., (power-driven - Mighty might or similr type, Pick-up sweeper, 1 cu. yd. & over Hopper capacity, Pipeline wrapping, cleaning or bending machine Op. Power Plant Engineer, Power actuated horizontal boring mach., over 6" op., pugmill op., roller, 8 tons & over, Rubber tired farm tractor, backhoe att., sheep foot op., tie tamper & hallast mach. Op., Tractor op., over D2, TD6 or similar HP with power take-off, tractor Op., over 50 HP without power take-off, trenching machine Op., (sewer, water, gas) turnapull op., (or similar type) well point installation, dismatling or repair mechanic

GROUP 6 - Air compressor Op. 375 CFR or over, bituminous spreader and bituminous finishing machine op., Concrete dist. & Spreader op., finishing machine longitudinal float op., joint mach. op., spray, concrete mixer op. 14S and under, concrete op. (Multi. Blade), curb mach. op., Fine grade Op., form trench digger, front end loader op (up to & incl. 1 cu. yd.), grader op. (motar patrol), gunite op. Augars and boring mach. op. power actuated jacks op., pump op., roller op., self-propelled chip Spreader, shoudering mach. Op. stump chipper op., tractor op. (D2, TD6 or similar HP with power take-off)

GROUP 7 - Brakeman, switchman, conveyor Op., deckhand, Fireman, tank Car Heater op., Gravel screening plant op., greaser leverman, mech. helper mech. space heater, Oiler, Self-prop. vib. pactor op., sheen foot roller tractor op. 50 HP or less w/o power take-off, truck crane oiler

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MINN-6-PEO

POWER EQUIPMENT OPERATORS: ZONE 2	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Counties of Aitkin, Blue Earth, Carlton, Dodge, Fairbault, Fillmore, Freeborne, Goodhue, Houston, Kanabec, LeSueur, Mille Lacs, Mower, Olmsted, Steele, Wabasha, Waseca, Winona & Washington; The remainder of Chisago, Sherburne & Wright Counties; Koochiching County East of a North-South Line From the Canadian Boarder to Pelland-The Western Right-of-Way of U. S. Hwy. 71 from Pelland to Big Falls & Minn. Hwy. #6; Itaska County East of the Western Right-of-way of Minn. Hwy. #6; Morrison County east of the western Right-of-Way of U.S. Hwy. #371 & U.S. Hwy #10 from Little Falls to the Morrison Benton County lines; Benton Co. East of the western-Right-of-Way of U. S. Hwy #10; and in Martin, Nicollet, Sibley & Stearns Counties, East of the Western Right-of-way of Minn. Hwy. #15. In every case the entire corporation limits of cities, towns & villages located on the boundaried described as highways shall be included in this area					
GROUP 1	14.45	.55	.50		
GROUP 2	11.16	.55	.50		
GROUP 3	10.85	.55	.50		
GROUP 4	10.73	.55	.50		
GROUP 5	10.63	.55	.50		
GROUP 6	9.85	.55	.50		
GROUP 7	9.45	.55	.50		

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POWER EQUIPMENT OPERATORS (CONT'D)

GROUP 1 - Helicopter Pilot
GROUP 2 Crane with over 135' Boom, excluding jib, Dragline and/or other similar equipment w/shovel type controls 3 cu. yds. & over Mfg. rates capacity
GROUP 3 - Cableway Op., concrete Mixer, Stationary Plant over 34E, Derrick, Dragline and/or similar equipment with shovel type control up to 3cu. yds. Mfg. rates capacity, Dredge Operator or Engineer, Dredge Oper. (power) & Yds. & over, Grader or Motor Patrol Finishing earth & Bituminous, Locomotive crane Operator, Master Mechanic, Mixer (paving) Concrete Paving Op., Road Mile., Op., incl. power supply, Mucking Mach., incl. mucking operations Conway or similar type, Refrigeration Plant Engineer, Tandem Scraper, Tractor Op., (Boom Type), Truck crane Op., Tugboat Op. 100 HP & over
GROUP 4 - Dual Tractor Op., Elevating Grader Op., Pumpcrete Op., Scraper Op., Struck Capacity 32 cu. yds. & over, self-propelled. Travelling Soil Stabilizer
GROUP 5 - Air track Rock Drill, Asphalt Bituminous Stabilizer Plant Op., Crushing Plant Op., or Gravel Washing, Crushing and Screening Plant Op., Dope Machine Op., Drill Rigs, Heavy Rotary or Churn or Cable Drill, Engineer in charge of Plant requiring First Class License, Fork Lift or Lumber Stacker, Front End Loader Op., Loader Op., over 1 cu. yds., Hoist Engineer, Hydraulic Tree Planter, Lanucherman, Locomotive, all types, Mechanic or welder, Multiple machines, such as air compressors, welding machines, generators, pumps or crane oilers, paving breaker or tamping machines op., (power-driven - Mighty might or similr type, Pick-up sweeper, 1 cu. yd. & over Hopper capacity, Pipeline wrapping, cleaning or bending machine Op. Power Plant Engineer, Power actuated horizontal boring mach., over 6" op., pugmill op., roller, 8 tons & over, Rubber tired farm tractor, backhoe att., sheep foot op., tie tamper & hallast mach. Op., Tractor op., over D2, TD6 or similar HP with power take-off, tractor Op., over 50 HP without power take-off, trenching machine Op., (sewer, water, gas) turnapull op., (or similar type) well point installation, dismatling or repair mechanic
GROUP 6 - Air compressor Op. 375 CFR or over, bituminous spreader and bituminous finishing machine op., Concrete dist. & Spreader op., finishing machine longitudinal float op., joint mach. op., spray, concrete mixer op. 14S and under, concrete op. (Multi. Blade), curb mach. op., Fine grade Op., form trench digger, front end loader op (up to & incl. 1 cu. yd.), grader op. (motar patrol), gunite op. Augars and boring mach. op. power actuated jacks op., pump op., roller op., self-propelled chip Spreader, shoudering mach. Op. stump chipper op., tractor op. (D2, TD6 or similar HP with power take-off)
GROUP 7 - Brakeman, switchman, conveyor Op., deckhand, Fireman, tank Car Heater op., Gravel screening plant op., greaser leverman, mech. helper mech. space heater, Oiler, Self-prop. vib. pactor op., sheen foot roller tractor op. 50 HP or less w/o power take-off, truck crane oiler

DECISION NO. MN78-2062 MINN-7-PEO

POWER EQUIPMENT OPERATORS:

ZONE 3

The Remainder of Benton, Itaksa Koochiching, Morrison, Nicollet, Sibley & Stearns Cos.	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	14.00	.55	.50		
GROUP 2	9.82	.55	.50		
GROUP 3	9.32	.55	.50		
GROUP 4	9.18	.55	.50		
GROUP 5	9.10	.55	.50		
GROUP 6	8.57	.55	.50		
GROUP 7	8.17	.55	.50		

GROUP 1 - Helicopter Pilot
GROUP 2 Crane with over 135' Boom, excluding jib, Dragline and/or other similar equipment w/shovel type controls 3 cu. yds. & over Mfg. rates capacity
GROUP 3 - Cableway Op., concrete Mixer, Stationary Plant over 34E, Derrick, Dragline and/or similar equipment with shovel type control up to 3cu. yds. Mfg. rates capacity, Dredge Operator or Engineer, Dredge Oper. (power) & Yds. & over, Grader or Motor Patrol Finishing earth & Bituminous, Locomotive crane Operator, Master Mechanic, Mixer (paving) Concrete Paving Op., Road Mile., Op., incl. power supply, Mucking Mach., incl. mucking operations Conway or similar type, Refrigeration Plant Engineer, Tandem Scraper, Tractor Op., (Boom Type), Truck crane Op., Tugboat Op. 100 HP & over
GROUP 4 - Dual Tractor Op., Elevating Grader Op., Pumpcrete Op., Scraper Op., Struck Capacity 32 cu. yds. & over, self-propelled. Travelling Soil Stabilizer
GROUP 5 - Air track Rock Drill, Asphalt Bituminous Stabilizer Plant Op., Crushing Plant Op., or Gravel Washing, Crushing and Screening Plant Op., Dope Machine Op., Drill Rigs, Heavy Rotary or Churn or Cable Drill, Engineer in charge of Plant requiring First Class License, Fork Lift or Lumber Stacker, Front End Loader Op., Loader Op., over 1 cu. yds., Hoist Engineer, Hydraulic Tree Planter, Lanucherman, Locomotive, all types, Mechanic or welder, Multiple machines, such as air compressors, welding machines, generators, pumps or crane oilers, paving breaker or tamping machines op., (power-driven - Mighty might or similr type, Pick-up sweeper, 1 cu. yd. & over Hopper capacity, Pipeline wrapping, cleaning or bending machine Op. Power Plant Engineer, Power actuated horizontal boring mach., over 6" op., pugmill op., roller, 8 tons & over, Rubber tired farm tractor, backhoe att., sheep foot op., tie tamper & hallast mach. Op., Tractor op., over D2, TD6 or similar HP with power take-off, tractor Op., over 50 HP without power take-off, trenching machine Op., (sewer, water, gas) turnapull op., (or similar type) well point installation, dismatling or repair mechanic

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POWER EQUIPMENT OPERATORS: (CONT'D

GROUP 6 - Air compressor Op. 375 CFR or over, bituminous spreader and bituminous finishing machine op., Concrete dist. & Spreader op., finishing machine longitudinal float op., joint mach. op., spray, concrete mixer op. 14S and under, concrete op. (Multi. Blade), curb mach. op., Fine grade Op., form trench digger, front end loader op (up to & incl. 1 cu. yd.), grader op. (motar patrol), gunite op. Augars and boring mach. op. power actuated jacks op., pump op., roller op., self-propelled chip Spreader, shoudering mach. Op. stump chipper op., tractor op. (D2, TD6 or similar HP with power take-off)

GROUP 7 - Brakeman, switchman, conveyor Op., deckhand, Fireman, tank Car Heater op., Gravel screening plant op., greaser leverman, mech. helper mech. space heater, Oiler, Self-prop. vib. pactor op., sheen foot roller tractor op. 50 HP or less w/o power take-off, truck crane oiler

DECISION NO. MN78-2062 MINN 62 TD

TRUCK DRIVERS: Areas 1 and 2 Twin City & Duluth Metro Area Counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, Washington, Wright, Sherburne, Chisago south of T-34-N, Carlton, Cook, Lake, St. Louis & Itaska Co., East of T-H-6	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	9.20	.40	.50		
GROUP 2	8.90	.40	.50		
GROUP 3	8.80	.40	.50		
GROUP 4	8.60	.40	.50		

GROUP 1 - Driver (Hauling machinery for employer's own use, including operation of hand & power operated winches);Truck train Mechanic, Welder; Tractor-Trailer; Off-Road Truck

GROUP 2 - Tri-axle (including 4-Axles); Dump Dry batch Hauler; Tank Truck (Gas, Oil, Road Oil & Water); Boom & "A" Frame; Ready Mix Concrete; slurry Driver.

GROUP 3 - Bituminous Distributor; (1-Man Operatin); Tandem Axle.

GROUP 4 - Bituminous Distributor Spray (rear-end oiler); Dumpman; greaser & truck Servicemen; Tank Truck Helper (Gas, Oil, Road Oil & Water) Teamster and Stableman. Tractor Operator (Wheel type used for any purpose) Pilot car driver, self-propelled Packer; Slurry Operator; single Axle Trucks.

DECISION NO. MN78-2062

MINN-55-TD

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS Area 3 Southeastern Area Counties of Dodge, Fillmore, Freeborn, Goodhue, Mower, Olmsted, Rice, Steele, Wabasha & Winona Counties					
GROUP 1	9.15	.40	.50		
GROUP 2	8.85	.40	.50		
GROUP 3	8.75	.40	.50		
GROUP 4	8.55	.40	.50		

GROUP 1 - Driver (Hauling machinery for employer's own use, including operation of hand & power operated winches);Truck train Mechanic, Welder; Tractor-Trailer; Off-Road Truck

GROUP 2 - Tri-axle (including 4-Axles); Dump Dry batch Hauler; Tank Truck (Gas, Oil, Road Oil & Water); Boom & "A" Frame; Ready Mix Concrete; slurry Driver.

GROUP 3 - Bituminous Distributor; (1-Man Operation); Tandem Axle.

GROUP 4 - Bituminous Distributor Spray (rear-end oiler); Dumpman; greaser & truck Servicemen; Tank Truck Helper (Gas, Oil, Road Oil & Water) Teamster and Stableman. Tractor Operator (Wheel type used for any purpose) Pilot car driver, self-propelled Packer; Slurry Operator; single Axle Trucks.

DECISION NO. MN78-2062

MINN-7-TD

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS: Area 4 Mankato Area					
COUNTIES OF: Blue Earth, LeSueur Nicollet and Waseca					
GROUP 1	8.62	.40	.50		
GROUP 2	8.32	.40	.50		
GROUP 3	8.22	.40	.50		
GROUP 4	8.02	.40	.50		

GROUP 1 - Driver (Hauling machinery for employer's own use, including operation of hand & power operated winches);Truck train Mechanic, Welder; Tractor-Trailer; Off-Road Truck

GROUP 2 - Tri-axle (including 4-Axles); Dump Dry batch Hauler; Tank Truck (Gas, Oil, Road Oil & Water); Boom & "A" Frame; Ready Mix Concrete; slurry Driver.

GROUP 3 - Bituminous Distributor; (1-Man Operation); Tandem Axle.

GROUP 4 - Bituminous Distributor Spray (rear-end oiler); Dumpman; greaser & truck Servicemen; Tank Truck Helper (Gas, Oil, Road Oil & Water) Teamster and Stableman. Tractor Operator (Wheel type used for any purpose) Pilot car driver, self-propelled Packer; Slurry Operator; single Axle Trucks.

DECISION NO. MN78-2062 MINN-5-TD

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS - Area 5 Western Area					
Counties of Aitkin, Benton, Fairbault, Kanabec, Koochiching LeSueur, Mille Lacs, Morrison, Sibley, Stearns, Remainder of Chisago & Itaska Counties					
GROUP 1	8.02	.40	.50		
GROUP 2	7.72	.40	.50		
GROUP 3	7.62	.40	.50		
GROUP 4	7.42	.40	.50		

GROUP 1 - Driver (Hauling machinery for employer's own use, including operation of hand & power operated winches);Truck train Mechanic, Welder; Tractor-Trailer; Off-Road Truck

GROUP 2 - Tri-axle (including 4-Axles); Dump Dry batch Hauler; Tank Truck (Gas, Oil, Road Oil & Water); Boom & "A" Frame; Ready Mix Concrete; slurry Driver.

GROUP 3 - Bituminous Distributor; (1-Man Operation); Tandem Axle.

GROUP 4 - Bituminous Distributor Spray (rear-end oiler); Dumpman; greaser & truck Servicemen; Tank Truck Helper (Gas, Oil, Road Oil & Water) Teamster and Stableman. Tractor Operator (Wheel type used for any purpose) Pilot car driver, self-propelled Packer; Slurry Operator; single Axle Trucks.

[FR Doc. 78-19189 Filed 7-13-78; 8:45 am]

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FRIDAY, JULY 14, 1978
PART III



DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

Food and Drug Administration

COMMON OR USUAL NAMES FOR VEGETABLE PROTEIN PRODUCTS AND SUBSTITUTES FOR MEAT, SEAFOOD, POULTRY, EGGS, OR CHEESES WHICH CONTAIN VEGETABLE PROTEIN PRODUCTS AS SOURCES OF PROTEIN

Tentative Final Regulation

[4110-03]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 102]

[Docket No. 75N-0205]

COMMON OR USUAL NAMES FOR VEGETABLE PROTEIN PRODUCTS AND SUBSTITUTES FOR MEAT, SEAFOOD, POULTRY, EGGS, OR CHEESES WHICH CONTAIN VEGETABLE PROTEIN PRODUCTS AS SOURCES OF PROTEIN

Tentative Final Regulation

AGENCY: Food and Drug Administration.

ACTION: Tentative final regulation.

SUMMARY: This tentative final regulation establishes common or usual names for all uses of vegetable protein products: The vegetable flours, vegetable protein concentrates, and vegetable protein isolates. It provides that the term "vegetable protein product" shall be included in the name of a food in which a vegetable protein product is a source of protein and which resembles and substitutes for meat, seafood, poultry, eggs, or cheeses. This tentative final regulation also includes definitions of nutritional equivalence to meat, seafood, poultry, eggs, and cheeses. A substitute for one of these foods which contains the nutrients at the levels described in the appropriate definition will not be considered nutritionally inferior to the food for which it substitutes and will not have to be labeled "imitation." The names for the vegetable protein products and the substitute foods may include terms like "textured" and "granules" or "bits," when they are appropriate. Additionally, this tentative final regulation establishes the manner in which these substitute foods are to be referred to in the names of finished foods containing them.

DATES: Comments on new developments and the revisions made to the proposed regulation and issued as part of this tentative final regulation by September 12, 1978; tentative effective date of final regulation: July 1, 1979.

ADDRESS: Written comments to the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Howard N. Pippin, Bureau of Foods (HFF-312), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-245-3092.

SUPPLEMENTARY INFORMATION:

BACKGROUND

In the FEDERAL REGISTER of December 5, 1970 (35 FR 18530), the Commissioner of Food and Drugs issued a proposed to establish a definition and standard of identify for a class of foods to be known as "textured protein products." Most of the foods covered by this proposal were vegetable flours and products derived from them.

In the FEDERAL REGISTER of June 14, 1974 (39 FR 20892), the Commissioner terminated the proposal for a standard of identify and proposed to establish common or usual names for certain of these vegetable products. The proposed applied only to those vegetable protein products that resemble and substitute for the major protein foods: Meat, seafood, poulty, eggs, or cheeses. Names were proposed for three types of vegetable protein products: The vegetable flours, vegetable protein concentrates, and vegetable protein isolates. The proposed names were consistent with current industry terminoloy based primarily on the technology of products made from soy. The names were to apply to the vegetable protein products at all stages of processing, from the initial state of, for example, a soy protein concentrate with no nonsoy ingredients to the finished food which substitutes for and resembles in color, taste, texture, etc., a major protein food and contains the soy protein conentrate as its vegetable protein source.

In addition to the names, the proposal contained a definition of nutritional equivalence to the major protein foods. This definition was a nutrient profile consisting of nutrient levels averaged from representative members of the group of major protein foods: Meat, seafood, poultry, eggs, and cheeses. According to § 101.3(e) (21 CFR 101.3(e)), a food which resembles and substitutes for another food must be labeled as an imitation if it is nutritionally inferior to the food for which it substitutes. According to the proposal, a vegetable protein product substitute for a major protein food would be defined as nutritionally equivalent to the food for which it substitutes when it contains the nutrients at the levels specified in the profile.

Sixty-two comments were received in response to the proposal, predominately from manufacturers of vegetable protein products, food processors who use vegetable protein products, and trade associations. Additional comments received after the close of the comment period were also considered. Almost all the comments suggested some revision, whether the comment as a whole supported or opposed the regulation. The Commissioner has evaluated the comments and has revised the regulation accordingly. Nomenclature has been simplified by making "vegetable protein product" part of the name of foods containing vegetable protein products used as substitutes for meat, seafood, poultry, eggs, or cheeses. The tentative final regulation also specifies the names for all primary vegetable protein products, irrespective of how they might be used. As revised, the regulation also contains six nutrient profiles for determining nutritional equivalence when vegetable protein products are used as substitutes for meat, seafood, poulty, eggs, or cheeses. The reasons for these and other revisions are discussed in more detail below.

In the Commissioner's judgment, the revisions do not significantly alter the regulation; however, in order to afford interested persons the opportunity to submit comments on these revisions and their impact on the regulation as a whole, and any new developments since the proposal was made that warrant consideration, he is issuing the regulation as a tentative final regulation pursuant to 21 CFR 10.40(f)(9). He will review any comments on the revisions or new developments received within the 60-day comment period and issue in the FEDERAL REGISTER, as soon as possible after the comment period, the final regulation or an announcement of any modification of the regulation to be made on the basis of the comments.

The issuance of a common or usual name regulation for foods which contain vegetable protein products as sources of protein and substitute for major protein foods continues to be needed to ensure that the nature of these foods is adequately identified for consumers, and to identify the levels of nutrients the substitute foods must contain to be considered nutritionally equivalent to the foods they replace in the diet. Vegetable protein products are coming into increasing use in the American diet as protein sources in substitutes for the traditional foods that have been the major sources of animal protein for the population, i.e., meat, seafood, poultry, eggs, and cheeses. If a substitute food containing a vegetable protein product as a protein source is nutritionally inferior to the major protein food it replaces, it is essential that consumers be alerted to the deficiency. The consumer will be alerted by the label designation "imitation" if the substitute food is not nutritionally equivalent to the food it replaces, as provided by section 403(c) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343), this regulation and 21 CFR 101.3(e).

Since the proposal was published, the Commissioner has observed that in references to these protein products the word "vegetable" is almost always used instead of the word "plant." Therefore, the Commissioner has changed the manner in which he

refers to this class of foods, and the regulation refers to the products as "vegetable protein products," although the term "plant" may still be used. The proposal included the words "vegetable" and "cereal" (where appropriate) as synonyms for "plans." The revised regulation does not provide for "cereal," because the term would be appropriate in only a limited number of cases.

The other revisions are discussed in detail below along with the issues raised by the comments and the Commissioner's responses.

LEGAL AUTHORITY; COORDINATION WITH USDA

1. Several comments questioned the Commissioner's statutory authority to establish mandatory common or usual names for foods other than by promulgation of standards using procedures set forth in sections 401 and 701(e) of the Federal Food, Drug, and Cosmetic Act ("the act"). One contended that common or usual name regulations should not be promulgated until pending litigation which questions their legality is settled.

The Food and Drug Administration has in the past promulgated regulations found in 21 CFR Part 102, Subpart B, establishing the names of foods on the basis of the authority conferred by sections 201(n), 403, and 701(a) of the act. The Commissioner concludes that these provisions of the act contain ample authority for the establishment of common or usual name regulations and that such regulations are well within existing statutory authority. Furthermore, this conclusion has been confirmed by the ruling in *American Frozen Food Institute* v. *Mathews*, 413 F. Supp. 548 (D.D.C. 1976), affirmed per curiam, 555 F. 2d 1059 (D.C. Cir. 1977), the litigation referred to in the comment, in which the common or usual name regulations were upheld. The Commissioner believes he has the authority to issue this regulation and is doing so at this time because there is a pressing public need for its issuance as explained above.

2. One food processor contended that the proposed regulation would establish the entire composition of a food and thus it would resemble more a food standard than a regulation providing label information regarding characterizing ingredients. The comment recommended that the agency adhere to the general principles for common or usual names found in 21 CFR Part 102 and issue a regulation that does not contain the detailed compositional requirements present in the proposal.

The Commissioner does not agree that this regulation establishes compositional requirements resembling those of a food standard. The regulation does not mandate the overall composition of any vegetable protein product or substitute food. It simply provides nomenclature that identifies a similar group of foods and describes their material characterisitics. The specific ingredients in the foods covered by the regulation are optional. Furthermore, the protein and vitamin/mineral profiles in the regulation do not constitute compositional requirements like those in a food standard. The profiles establishes the basis upon which the substitute foods are considered nutritionally equivalent to foods they substitute for and resemble. A food that is nutritionally inferior must bear the label designation "imitation" pursuant to section 403(c) of the act and § 101.3(e) of the regulations. The profiles deal solely with nutritional values, and do not specify the particular ingredients the food must contain to meet the nutritional values. Also, the Commissioner advises that the common or usual names established by this regulation are consistent with the general principles under 21 CFR 102.5, particularly paragraphs (a) and (c).

3. Several comments expressed concern that some provisions of the proposal are inconsistent with provisions of regulations and proposals of the U.S. Department of Agriculture (USDA). They requested close coordination between the two agencies. One suggested a joint rule or parallel rules for vegetable protein products. Others suggested that all portions of the proposed regulation dealing with meat and meat food products be deleted, since USDA has exclusive jurisdiction over standards for and labeling of meat products. Another comment stated that because the specific names prescribed in this regulation are different from the general terms permitted by USDA regulations, identical products would have to be labeled differently, depending solely on their method of distribution. Still another comment asked whether FDA's or USDA's regulations prevail, stating that in complying with one agency's regulations a product would violate the regulations of the other.

The Commissioner advises that there has been close coordination between representatives of the Food and Nutrition Service and the Animal and Plant Health Inspection Service of USDA and those of FDA to ensure that this regulation is compatible with regulations and policies of USDA. Furthermore, the regulation has been revised to state that the names for foods provided in this regulation do not supersede those provided for by other Federal requirements. The Commissioner will provide further advice, on request, on the applicability of this regulation to specific foods.

APPLICABILITY AND APPROPRIATENESS OF REGULATION

4. Many of the comments expressed directly or indirectly some confusion regarding the products to which this regulation applies.

The Commissioner has made several revisions in the regulation to clarify its intent and applicability. The proposal dealt only with those vegetable protein products that resemble and substitute in whole or in part for meat, seafood, poultry, eggs, or cheeses. However, as discussed in detail below and in paragraphs 17 and 22, the revised regulation in § 102.75 provides names for the primary vegetable protein products, i.e., the vegetable flours, concentrates and isolates, irrespective of their uses, and in § 102.76 addresses the foods that contain those vegetable protein products as sources of protein and that substitute for meat, seafood, poultry, eggs, and cheeses. This section expressly limits its applicability to those substitute foods that: (a) Resemble the meat, seafood, poultry, eggs, or cheeses substituted for, and (b) are used in such a manner that there is less meat, seafood, poultry, eggs, or cheese in the finished food than is customarily expected or than appears to be present.

The new § 102.75 establishes names for all vegetable protein products that provide for an identification of the vegetable source and the product type, e.g., soy flour, corn protein isolate. Vegetable protein products may be used for other purposes in addition to use as a substitute for major protein foods, such as an ingredient in some other type of food. If the vegetable protein product bore different names when used as a substitute for major protein foods and when used for other purposes, consumers could be confused. Section 102.75 provides for names that are generally in current use for these foods. The regulation makes an exception for wheat gluten because it already has become the established name for one type of vegetable protein product as explained below in paragraph 13.

5. Two comments suggested that a common or usual name regulation be established for vegetable protein products used in any finished food, and that nutritional quality guidelines be established for those vegetable protein products that substitute for major protein foods. The reason given was that there may be foods other than meat, seafood, poultry, eggs, or cheeses for which the vegetable protein products will substitute and for which different nutrition equivalency profiles will be appropriate. One of the comments suggested as an alternative to separate regulations that a qualifying term such as "fortified" be used in the common or usual name

when the vegetable protein product contains the vitamins and minerals provided for in this regulation and is used as a substitute for the major protein foods, but not when the vegetable protein product is used to accomplish a technical effect in other foods.

The Commissioner advises that the revised regulation essentially accomplishes the purpose of these suggestions. Section 102.75 establishes names for all vegetable protein products with no provisions for nutrient addition, and § 102.76 provides a name and nutritional equivalence criteria for foods that resemble and substitute for the major protein foods that contain vegetable protein products as protein sources. Thus, for example, the name and appropriate nutrient profile in § 102.76 apply to soy flour formulated to resemble and substitute for cheese in a pizza, but not to soy flour used in the crust of that pizza. Nor do the provisions of § 102.76 apply to a food that contains soy flour as a protein source but that does not resemble one of the named major protein foods. Such a food would bear a name descriptive of its nature, and the soy flour would be declared in the list of ingredients.

Further, the Commissioner advises that the names provided by the revised regulation and the term "imitation," required by § 101.3(e) to appear on substitute foods that are nutritionally inferior to the foods for which they substitute will provide adequate information to consumers so that the term "fortified" is not necessary.

6. One comment stated that the language in proposed § 102.22(a) (1), (2), and (3) would violate section 403(b) of the act, which states that a food shall be deemed to be misbranded if it is offered for sale under the name of another food. The comment contends that the names "soy flour," "soy protein concentrate," and "soy protein isolate" have been used for years for products that contain no nonsoy additives and that the proposed regulation would result in misbranding.

While the Commissioner disagrees that the proposed nomenclature would violate the requirements of the act, he acknowledges that use of a term like "soy protein concentrate" to name both a product containing no nonsoy ingredients and a product containing such additional substances as flavors, colors, and nutrients could be confusing to the consumer. Accordingly, in the interest of label simplicity, as discussed in paragraph 17, the regulation has been revised to provide that the proposed names "——— flour," "——— protein concentrate," and "——— protein isolate" are required only for vegetable protein products that contain no added flavors, colors, or other added substances. If the food is sold with added ingredients for some use other than as a substitute for a major protein food, the general principles for common or usual names in § 102.5 generally govern the name of the food as sold. Any characterizing ingredients would have to be declared in the name, and the name must describe the basic nature of the food.

7. Several comments objected to the proposed system of vegetable protein identification and stated that "textured vegetable protein" should be recognized as a class of products which stands apart from the various vegetable flours, protein concentrates, and protein isolates. A trade association contended that the name "textured vegetable protein" has come to be associated with this class of products in the public mind and is a "common or usual" name. It was further stated that the proposed new pattern for common or usual names will confusingly commingle names and categories of foods which are well-established among persons familiar with the industry.

The Commissioner advises that while he does not agree that "textured vegetable protein" is an appropriate common or usual name, he has provided for use of the term "vegetable protein product" for those foods that contain vegetable protein products as protein sources and resemble and substitute in whole or in part for meat, seafood, poultry, eggs, or cheeses. He has also provided for use of the word "textured" where it is appropriate. Restriction of the terms "flour," "protein concentrate," and "protein isolate" to the primary vegetable protein products as described in § 102.75 should prevent the kind of confusion mentioned in the comment.

8. Numerous comments were concerned with the status of vegetable protein products used in foods at low levels for nonnutritional reasons. Some requested clarification of that status with respect to this regulation, others requested exemption of such products from the nutritional provisions, and still others suggested exemption from the entire regulation. A trade association requested that paragraph (h) of the proposed regulation be modified to make clear that the name of a finished food need not include the name of vegetable protein ingredients whose functions are solely technological. Similarly, some comments stated that certain USDA standards for meat products permit addition of low levels of vegetable protein products for functional purposes, and that such vegetable protein products should not be subject to the regulation. One comment stated that meeting the nutrition equivalency criteria should be optional for vegetable protein products used to USDA standardized foods, because the vegetable protein products are generally used at low levels for fundtional purposes.

The Commissioner advises that the proposal applied only to those vegetable protein products that substitute in whole or in part for meat, seafood, poultry, eggs, or cheeses, i.e., those subitutes foods that contain vegetable protein products as sources of protein whose presence in a food results in a smaller amount of meat, seafood, poultry, eggs, or cheese than is customarily expected or than appears to be present in that food. The proposal was not intended to establsih names for finished foods in which vegetable protein products are used solely for technological purposes. However, the Commissioner acknowledges the widespread confusion in this respect and has revised the regulation to clarify this matter, as explained above.

9. One comment stated that a distinction meat be made between vegetable protein that are used as ingredients in meat products, those that contain meat, and those that are capable of being complete meat subsitutes.

The comment did not amplify on the reasons that would warrant these distinctions, and accordingly, it is difficult to evaluate the comment. If the comment seeks to have three different names for ingredients like soy flour when used in three different types of meat products, the Commissioner must deny the request because it would be generally confusing to have a different name for each different use of a food or food ingredient. However, if by "vegetable protein products used as ingredients in meat products" the comment is referring to technological additives, then they are not subject to § 102.76. If vegetable protein products "which contain meat" can be interpreted as those substitute foods used at levels of not more than 30 percent when mixed with meat, then they are considered by this regulation to be nutritionally equivalent to the protein food with which they are mixed when, among other things, they have a protein efficiency ration (PER) of 80 percent of that of casein. On other hand, foods that contain vegetable protein products as protein sources that are "capable of being complete meat substitutes" must have a PER at least equal to that of casein in order to avoid nutritional inferiority. The Commissioner believes that the distinctions in this regulation are adequate to provide label information and appropriate nutritional value for these foods.

10. Several comments supported the provision in the proposal recognizing the use of vegetable protein products from various plant sources. In this respect some requested that cottonseed by specifically included in the list of examples of suitable vegetable protein sources. Another comment stated that the wording of paragraph (a) of proposed § 102.22 would have excluded

cottonseed as a source of vegetable protein. The comment suggested that the paragraph read "which are safe and suitable edible products produced from plant sources."

The Commissioner acknowledges that the wording of the proposal could have precluded use of cottonseed and other nonedible plants as sources of edible protein products, and the regulation has been revised to eliminate this implication. However, the Commissioner is not determining the safety nor the suitability of cottonseed products or any other products in this regulation. As with any other type of food, if a vegetable protein product or any component of a vegetable protein product is not generally recognized as safe, it is considered a food additive, and its safety and use are subject to approval under section 409 of the act. Additionally, the list of plants in the proposal was not intended to be all inclusive; the absence of a plant from that list does not prohibit its use as a vegetable protein source. Therefore, the Commissioner perceives no need to include cottonseed in the illustrative list of potential sources of vegetable protein.

11. A food processor asked whether this regulation applies to commercial livestock and poultry feeds and pet foods.

The Commissioner advises that this regulation applies to vegetable protein products used for human food; it does not apply to animal feeds or pet foods.

12. One comment asked what change is proposed for the product currently called "hydrolyzed plant protein." It was stated that there is less protein in this class of ingredients than in the soy products.

The Commissioner advises that this regulation has no likely application to "hydrolyzed vegetable protein," although such products are likely to be used as ingredients, e.g., as flavoring agents, in products subject to this regulation. He has no information to indicate that such a product is used, or is practical for use, as a source of protein in substitutes for any of the major protein foods. Section 101.35 specifies how the functional additive "hydrolyzed vegetable protein" is to be labeled, and no change is contemplated in that provision at this time.

13. A manufacturer requested exemption of wheat gluten from the proposed common or usual name. He stated that "wheat gluten" is already recognized as the name for the concentrate of the protein of wheat endosperm, which usually contains 75 to 80 percent protein. Wheat gluten under that name is also recognized in the standard of identity for bread (§ 136.3). Further, the comment stated that the name "wheat protein concentrate," which would be required under this regulation, is inappropriate for this product because it has been widely used to describe a concentrated wheat protein product extracted from the byproducts of wheat flour milling.

The Commissioner recognizes that wheat gluten is the long-established, widely used name for a 70- to 80-percent protein product made from wheat. He is also aware that gluten has a certain combination of functional characteristics which makes it unique among vegetable protein products. Since a significant amount of confusion would result from a changeover to the name prescribed by this regulation, the Commissioner concludes that the glutens, made from wheat and other grains, should be exempted to a limited extent from the regulation, and has revised the regulation accordingly. Thus, vegetable protein products made from gluten are to use the term "gluten" in the name of the product in lieu of the term "protein concentrate."

Distinction Among Flours, Concentrates, and Isolates

14. Another comment contended that the establishment of a separate name for each form of vegetable protein material departs from the general principles established in 21 CFR 102.5 for selecting common or usual names.

The Commissioner states that the separate names for the three forms of vegetable protein material are consistent with 21 CFR 102.5(a), which requires a term that describes the basic nature of the food. It further requires that such term be uniform among all identical or similar products and that it not be confusingly similar to the name of any other food that is not reasonably encompassed within the same name. Each class or subclass of food is to be given its own common or usual name that distinguishes it from different foods. The Commissioner concluded in the preample to the proposal and hereby reaffirms that the vegetable flours, concentrates, and isolates have sufficiently different properties that they require separate names.

15. One comment supported the concept of describing vegetable protein products according to the extent less desirable substances have been removed from the source plant material, but disagreed with the three proposed categories of vegetable protein products. It was contended that this classification is restrictive since it is wholly based on the current technology of soy products. The comment suggested division of vegetable protein materials into two classes: (a) "Unmodified material" and (b) "refined vegetable protein material" which would cover the proposed concentrates and isolates. The "refined vegetable protein materials" would then be specified according to their content of less desirable ingredients, which would vary with the plant source.

The Commissioner acknowledges that a naming system less connected with soy product technology might be desirable. However, he concludes that the names for vegetable protein products suggested in this comment are not suitable. The term "unmodified material" is too vague and the term "refined vegetable protein material" would include too wide a range of products. The suggested procedure for making the names more specific results in longer, more complicated names than those in the proposal, and the resulting names would be too technical to be readily understood by the consumer. The Commissioner has, therefore, decided to retain the categories essentially as proposed.

16. One comment recommended that the specific protein content (percent) of a vegetable protein product be provided as part of the common or usual name. Another stated that individual vegetable protein products as well as mixtures should be allowed use of the general term "plant protein product," with an appropriate percent protein declaration. For example, rather than referring to a product as "soy protein conentrate" it could be designated "70 percent soy protein product."

The Commissioner does not agree. He does not consider quantitative declaration of the protein content necessary for these vegetable protein products since they will, for the most part, be formulated or be sold with directions for formulation in foods that have protein contents consistent with those of the finished foods they substitute for and resemble. Further, the percent protein in a vegetable protein product is not sufficient information to describe the nature of the product and could confuse consumers by suggesting that the percentage relates to the amount of the vegetable product in the marketed food rather than the amount of protein in the vegetable product. For example, the name proposed in the comment would be less misleading if stated as "70 percent protein soy product," but even so, the percentage reference might not be understood by all consumers. According to the provisions of this regulation, each individual vegetable protein product will bear a name (i.e., flour, concentrate, or protein isolate) which is descriptive of characteristics other than protein content, e.g., physical and chemical properties. When individual vegetable protein products are blended and/or mixed with other substances so that the mixture is entitled to bear the general term "vegetable protein product," the description of the individual ingredients is maintained because each ingredient of the mixture is declared by its descriptive name in the ingredient list.

17. There were several requests that the regulation make clear that the protein content needed to qualify a product as a "flour," "concentrate," or "isolate" applies to the basic raw material and not to finished flour, concentrate, or isolated protein products which contain ingredients from other sources. One comment suggested that the basic vegetable protein product raw material to which the definitions of flour, concentrate, and isolated protein apply be referred to as the "major ingredient of extenders" rather than as "extenders."

The Commissioner acknowledges that the wording of the proposal in this respect is subject to misinterpretation. For this reason and other reasons, the regulation is revised to restrict the use of the terms "flour," "concentrate," and "isolate" to the basic raw material and not to the foods that contain materials other than from the source plant. The Commissioner wishes to make clear, however, that once a vegetable protein product without additives has met the definition of, for example, a concentrate, it remains a concentrate regardless of what protein or nonprotein ingredients are mixed with it. If that concentrate is mixed with a protein isolate, the mixture is protein concentrate and protein isolate. The ingredient list of such a mixture would contain the individual names of the protein concentrate and the protein isolate, irrespective of the use of any general term to describe the mixture.

NOMENCLATURE FOR VEGETABLE FLOURS

18. Numerous comments stated that the word "protein" should be permitted in the names of certain of the vegetable flours described in proposed § 102.22(a)(1). Two comments stated that a 50-percent level of protein in a (dehydrated) food is a substantial level and such a food should be named accordingly. One comment suggested that products containing 45 to 65 percent protein on a dry basis retain the name "protein," while another suggested a range of 50 to 65 percent. Still another comment stated that vegetable protein products with less than 65 percent protein on a dry basis are clearly established as protein supplements and the level of protein supplied to a substitute food is the same as would be supplied by a vegetable product with greater than 65 percent protein (dry basis). Two comments asked why flours that have 2 to 4 times the amount of protein of such common flours as wheat, corn, or rice should not be labeled as protein flours. A manufacturer and a trade association recommended that vegetable protein products containing 30 to 65 percent protein (dry basis) bear the term "protein." The manufacturer stated that the protein in flour connots the "single stength" or naturally occurring version of the entity described as "isolated" and "concentrated" in proposed § 102.22(a) (2) and (3). In addition, one comment stated that the phrase "textured vegetable *protein*" has been used for these products throughout the industry and has gained consumer recognition. This comment and one other suggested that "protein" be allowed for any product with greater than 30 percent protein (dry basis).

The Commissioner advised that the term "flour" connotes a food product made by grinding and sometimes sifting cereal grains, oilseeds, nuts, and similar plants. Moisture and/or oil may be removed during production. Since only moisture and/or oil are removed from the source material, it is not appropriate to designate a flour as "protein." The term "protein" in the name of such a food would suggest that something else has been done to the original source plant and may be misleading. The fact that one food naturally contains a greater amount of protein than another food is not adequate justification for use of the word "protein" in its name. Such products as nonfat dry milk and dried eggs are not designated "protein" even though they contain large amounts of protein. The Commissioner further advises that the products designated by this regulation as flours are not meant to represent the "single strength" version of the entity described as concentrated or isolated. The Commissioner is defining the protein content of a concentrate and an isolate, and he does not consider it necessary or appropriate to refer to the vegetable protein products that contain less than 65 percent protein as "protein" flours. However, as discussed in paragraph 22, when a vegetable flour is a source of protein in a food that resembles and substitutes for a major protein food, the food will bear the term "vegetable protein product." The Commissioner does not consider this to be inconsistent, because the vegetable flour will be identified in the ingredient list as required by § 101.4.

19. A trade association recommended that the name of a vegetable protein product containing less than 65 percent protein be required to provide some indication of the level of fat present, e.g., a term such as "full fat" or "defatted." The comment stated that such terms would not be necessary for the two types of products with higher protein content, since it does not seem technically feasible to produce full fat or partially defatted vegetable protein products containing 65 percent protein or more. Further, designation of fat level would also provide a means of distinguishing between products in the 0 to 65 percent protein group which differ significantly in protein content.

The Commissioner is not aware of any instances where a term like "full fat" or "defatted" would be helpful to the consumer, and consequently he does not believe that there is justification for requiring such a term on the labels of vegetable flours. However, information such as "full fat" or "defatted" is not prohibited as long as it is accurate, and manufacturers may provide this additional information in labeling.

NOMENCLATURE FOR PROTEIN ISOLATES

20. Several comments suggested that the name of the product described in proposed § 102.22(a)(3) of the proposal be changed from "———— protein isolate" to "isolated ———— protein," where the blank is filled with the name of the protein source or a general term ("plant" or "vegetable"), as appropriate. One manufacturer stated that this would avoid the consumer confusion which might result because the consumer is not familiar with the term "isolate" and might falsely think a concentrate contains more protein than an isolate. Other comments stated that there would be a certain stigma associated with "protein isolate" that would not exist with "isolated protein." Still another comment suggested that the term "isolate" be dropped from the name of that product, stating that the term adds nothing to consumer information.

The Commissioner acknowledges that the term "isolate" may be new to some consumers. However, he concludes that, in cases like this in which the use of a new product or a relatively obscure one is developing rapidly, the most appropriate terminology will likely be new to some consumers. As consumer familiarity with vegetable protein products increases, so will understanding of the terminology. The term "———— protein isolate" is widely used in the industry and is appropriately descriptive of the product; therefore, the Commissioner has retained it in the revised regulation. However, since he considers that the term "isolated ———— protein" is not any less informative than "———— protein isolate," both terms are included in the regulation.

21. One commenter was concerned that the description given in the preamble to the proposal for production of protein isolates would result in his corn protein isolate not being included in the definition of isolate. It was stated that the corn protein isolate contains 90 percent protein on a dry weight basis, but it is produced by a procedure different from the one described in the preamble. The comment requested revision of the preamble to the proposal. Another comment recommended editing the description of isolate production so as not to pre-

clude use of other means of isolating vegetable protein.

The Commissioner advises that the description of the meaning of "isolate" in the preamble to the proposal was not intended to specify a production procedure. Moreover, the definition of protein isolates in the final regulation is not restricted to those products manufactured by the procedure described in the preamble, or to any specific procedure.

NOMENCLATURE FOR MIXTURES

22. Numerous comments questioned the necessity of requiring a vegetable protein product to identify both the precise plant or plants from which it is derived and the strength or strengths (i.e., flour, concentrate, and/or isolate) of the various protein sources involved. They are concerned that such names would be extremely long and complex. The comments recommended greater use of general terms to describe the plant sources and the protein product types. It was noted in some comments that the exact plant source and product type would be identified in the ingredient statement. One comment stated that, without broader use of general terms, some manufacturers would be encouraged to "spike" their products with insignificant levels of several vegetable protein sources simply to take advantage of the proposed name simplification for mixtures. Other comments objected to requiring separate listing of vegetable flours in the name of a mixture of flour, concentrate, and/or isolate. One comment stated that the name of the mixture should be a single general term like "vegetable protein product," with each of the vegetable protein ingredients of the mixture declared in the ingredient statement. One comment stated that the proposed common or usual names would mislead consumers into believing that protein concentrate and protein isolate are significantly better than soy flour and that soy flour is significantly inferior to other forms of vegetable protein material.

The Commissioner has reevaluated the advantages and disadvantaged or requiring the amount of detail proposed for common or usual names of vegetable protein products. In the reevaluation are considerations that: (a) Long and complicated common or usual names may not be meaningful, and thus would have a negative effect on consumers and be contrary to the Commissioner's intent to provide useful and informative labeling; and (b) each individual plant source and product type (flour, concentrate, and isolate) is required to be declared in the ingredient list of the food in accordance with 21 CFR 101.4. The Commissioner concludes that in the interest of simplicity in the statement of identity of the foods involved, the term "vegetable protein product" will provide sufficient information in the common or usual name of a food that contains one or more vegetable protein products as protein sources and substitutes in whole or in part for a major protein food (meat, seafood, poultry, eggs, or cheeses). The regulation has been revised so that § 102.76 applies to foods that meet both the following requirements: (a) The substitute in whole or in part for the major protein foods, i.e., their presence in another food results in a smaller amount of meat, seafood, poultry, eggs, or cheese than is customarily expected or than appears to be present in that food; and (b) they contain as a source of protein one or more of the vegetable protein products for which common or usual names are established in § 102.75 (flours, concentrates, and isolates), and those amounts of water, fat or oil, colors, flavors, and any other added substances necessary to make the resultant mixtures resemble the meat, seafood, poultry, eggs, or cheeses for which they substitute. These added substances may be part of the food at the time of sale or may be added by the purchaser according to the manufacturer's directions. The names for the substitutes for meat, seafood, poultry, eggs, or cheeses may include the term "textured" or "texturized" and/or a term that accurately describes the physical form of the food, e.g., "granules," when such term is appropriate. Of course, as was provided in the proposal, the names established in this regulation do not apply to foods for which there is a specific Federal requirement for different nomenclature. Because § 102.76 covers only the foods that resemble and substitue for the major protein foods, the definitions of nutritional equivalence apply only to those foods.

23. Several comments recommended that where the general term "vegetable," ("plant") is allowed in the name of a vegetable protein product, each of the various proteins encompassed by that term be identified. One trade association suggested that the general term be marked with an asterisk to identify a footnote that would identify the various protein sources.

The Commissioner agrees that each of the various individual vegetable protein products encompassed by a general term should be identified. However, he considers that it is not necessary to identify each protein source in the name since § 101.4 requires that each be individually identified in the ingredient statement. Further, the revision of § 101.4 published in the FEDERAL REGISTER of January 6, 1976 (41 FR 1156) specifies the manner in which this declaration shall be made. In the interest of clarity, a reference to the requirements of § 101.4 has been added to the regulation, and the Commissioner concludes that the revised regulation provides adequate identification of individual vegetable proteins.

24. One comment suggested that, when a description of the physical form of a product, such as "bits," "chunks," or "textured" is included in the name of a product eligible for the general name "vegetable protein product," the use of the word "product" in the name should be optional.

The Commissioner acknowledges that in some cases a name containing a term like "vegetable protein product bits" may be less appealing than one containing the term "vegetable protein bits." There is a significant difference between the two names, however. The term "bits" suggests only that the food has been formed into certain size shapes. The term "product" in the name indicates that there is some difference between the food and pure vegetable protein. This information is not provided in the name without the word "product." Therefore, the Commissioner concludes that the term "product" shall remain mandatory, as proposed, and not be optional as suggested by the comment.

LABELING FOR FLAVORS, ADDED ANIMAL PRODUCTS, AND OTHER ADDED INGREDIENTS

25. Several comments requested that proposed § 102.22(b) be deleted from the regulation on the ground that it is repetitive of the flavor declaration requirements of 21 CFR 101.22. Another comment contended that proposed § 102.22(b) is inconsistent with general FDA regulations in that flavor declaration is required by § 101.22 only when flavor representation is made in labeling, while this proposal would require declaration of any flavoring added to the vegetable protein product, whether or not it is represented in labeling.

The Commissioner acknowledges that the wording of the proposal regarding flavor declaration conflicts with that of § 101.22. The regulation has been revised so that it conforms to § 101.22. Further, the Commissioner states that it is appropriate in some cases, in the interest of clarity, to repeat in one section of the regulations a provision found in another regulation in 21 CFR Chapter I. Reference to the flavor declaration regulation is, therefore, retained in the revised regulation.

26. Some comments objected to use of terms that denote animal protein foods on the labels of vegetable protein products. A meat producers' trade association recommended that flavor declarations for products flavored to resemble animal protein foods be included in the descriptive portion of the label instead of in the name of the

vegetable protein product. One consumer stated that any such names of animal protein foods should be accompanied by the term "artificial" in type size and style identical to that of the animal protein food.

The Commission advises that, as provided in § 101.22, when the labeling of a food bears a representation of flavor other than in the ingredient statement, the label is misleading unless such flavoring is declared with due prominence. When a substitute food is flavored to resemble another food, it may be necessary to use the name of that food in order to adequately describe the flavor of the substitute food. For example, when a food is flavored to resemble shrimp, the only informative way to describe the added flavor is "shrimp flavored" or "artificially shrimp flavored," depending on the nature of the flavoring substances. The Commissioner concludes that the use of such flavor designation in the name of a substitue food containing a vegetable protein product as a protein source is appropriate, and that § 101.22 requires sufficient prominence for the terms "artificial" and "flavored" to avoid consumer deception.

27. One comment recommended that the establishment of common or usual names for foods that contain both vegetable protein products and characterizing quantities of animal protein product(s), such as milk protein or fish protein concentrate, added for nutritional or technological purposes, be considered in an independent rule making proceeding so that the relevant issues can be fully discussed in their proper context. Other comments stated that when such refined animal protein products are used at a level below that of the vegetable proteins in a substitute food containing a vegetable protein product as a protein source, reference to the animal protein in the common or usual name is not warranted. Another comment stated that the names of the animal proteins are not necessary in the food name as long as the total weight of the complementary proteins does not exceed 20 percent of the weight of the protein in the name of the food.

The Commissioner concludes that it is appropriate to provide for labeling of substitute foods containing vegetable protein products as protein source that contain added animal products at this time. Declaration of the animal product is important in order to provide information that a food named "vegetable" actually contains some amount of an animal product(s). Without such a declaration, for example, consumers who do not wish to consume animal source ingredients might be misled by the term "vegetable" in the name into purchasing a food they do not want. Therefore, the regulation has been revised to require common or usual name declaration of any animal product ingredient of a substitute food containing a vegetable protein product as described in § 102.76(a). Thus, for example, a vegetable protein food that resembles and substitute for a ground beef patty and contains beef fat but no meat might be labeled "artifically beef flavored vegetable protein product, contains beef fat." The animal products which must be declared pursuant to this provision include, but are not limited to, refined animal proteins such as milk proteins and egg albumin, and animal fats such as lard and tallow.

28. A manufacturer further stated that any number of additional ingredients which serve nutritional and/or functional purposes should be permitted in foods containing vegetable protein products as protein sources without requiring that the names of such ingredients then become part of the common or usual name of the food.

The Commissioner advises that, as with any other type of food, ingredients in substitute foods containing vegetable protein products as protein sources need not be declared other than in the ingredient statement unless so required by other regulations or unless they are of a sufficiently characterizing nature that declaration in the common or usual name would be required under 21 CFR 102.5 (b) or (c). All requirements in this regulation for declaration of an ingredient or component in the name of a food are in accord with § 102.5.

29. One food processor suggested that when a vegetable protein product which meets the nutritional criteria of this regulation is added to a food for its technological effect at a level of under 3.5 percent, it should be permissible to simply list the product in the ingredient statement, e.g., "Fortified soy granules (soy flour, caramel color)," and not have such an ingredient statement trigger nutrition labeling, as is the case with enriched flour under 21 CFR 101.9(b)(7), when enriched flour is used in a food and is declared in the labeling solely in the ingredient statement.

The Commissioner advises that he has received a petition that proposes an exemption from nutrition labeling for foods that contain as an ingredient a food which is fortified pursuant to a regulation. Foods containing vegetable protein products and fortified pursuant to this regulation will also be considered for any such exemption if one is proposed and adopted.

The Commissioner also advises that the ingredient declaration suggested by the comment does not meet the requirements of § 101.4 as amended January 6, 1976, since the declaration does not include the added nutritions, that are ingredients of the soy granules.

30. One comment stated that it is not clear whether the amino acids, vitamins, and minerals added to a food containing a vegetable protein product pursuant to this regulation must be declared in the ingredient listing for the vegetable protein product or for a finished food in which the vegetable protein product is used.

The Commissioner advises that this regulation in no way affects the requirements for declaration of ingredients as specified in §§ 101.4 and 101.100. Unless specifically exempted in § 101.100, all ingredients of a food containing a vegetable protein product must be declared in its label and on the label of any other food in which such food is used. To preclude any ambiguity in this regard, reference to the requirements of § 101.4 is included in the revised regulation.

Relationship to Labeling Product "Imitation"

31. A consumer interest group stated that when a vegetable protein product is labeled as an imitation, the consumer may be faced not only with a nutritionally inferior product but with no nutrition labeling available with which to make an intelligent buying decision. The group requested that some provision be made to correct this problem.

The Commissioner advises that labeling a nutritionally inferior product as an imitation does not exempt it from nutrition labeling when the product contains any added nutrient(s) or makes a nutritional claim. If it can be shown that nutrition labeling is needed and appropriately required in circumstances additional to those provided in § 101.9, a petition should be filed to amend that regulation.

32. One comment objected to "imitation meat" labeling for foods that contain meat, seafood, poultry, eggs, or cheeses in combination with vegetable protein product(s) not meeting the nutrition profiles in this regulation. The comment recommended that labeling of these vegetable protein products be similar to that required for flours and enriched flours, that is, that vegetable protein products simply be named "vegetable protein product" or "fortified vegetable protein product," as appropriate. Another requested clarification of how to label a product as an imitation pursuant to the proposal.

The Commissioner advises that a food containing a vegetable protein product as a protein source that is nutritionally inferior to a major protein food need not be labeled as an "imitation" of that food, unless and until it is used or represented for use as a substitute for meat, seafood, poultry, eggs, or cheese. Such a product used solely for technological purposes is not subject to the nutrient provisions of this regulation. When a food contain-

ing a vegetable protein product as a protein source resembles and substitutes for a major protein food, and does not contain enough nutrients to make it nutritionally equivalent to the food for which it substitutes, it must be labeled "imitation." However, when such a food is labeled "imitation meat" or "imitation fish," for example, a phrase describing the nature of the food will usually also be required pursuant to § 102.5(c), e.g., "Imitation Fish—contains textured soy flour."

33. One comment objected to the concept that a food which resembles and substitutes for another food is not subject to imitation labeling if it is not nutritionally inferior to the food for which it substitutes. The comment stated that "* * * if a food is an *imitation* it should be so labeled * * * the Government should not enhance the position of those desiring to sell *imitation* foods * * * [comment's emphasis]."

The Commissioner advises that the definition of the term "imitation" is not within the scope of this regulation. That subject was discussed thoroughly when § 101.3(e) (formerly § 1.8(e)) was proposed in the FEDERAL REGISTER of January 19, 1973 (38 FR 2138) and published as a final rule in the FEDERAL REGISTER of August 2, 1973 (38 FR 20702).

34. One comment stated that if a substitute food containing a vegetable protein product as a protein source replaces over 50 percent of an animal source component, the mixture should be labeled as the vegetable protein source and not bear "imitation" labeling or reference to the animal component replaced.

The Commissioner does not agree. For example, a food which contains 60 percent substitute food with vegetable source protein and 40 percent animal protein food would be deceptively labeled if it did not bear prominent information regarding the presence of both sources of protein. In addition, if a food containing a vegetable protein product as a protein source resembles and substitutes for a major animal protein food and is nutritionally inferior to that food, it is required by § 101.3(e), not by this regulation, to be labeled an "imitation". This requirement applies irrespective of the proportion in which such a substitute food is mixed with the major protein food.

DETERMINATION OF NUTRITIONAL EQUIVALENCE

35. A number of comments disagreed with the establishment of a definition of nutritional equivalence that can be used to avoid imitation status. They suggested that the general policy in § 101.3(e) be used so that a substitute food containing vegetable protein product as a protein source would be an imitation if it reduces, quantitatively or qualitatively, the nutritional value of the food to which it is added or for which it is substituted. Some comments stated that while vegetable protein products should not downgrade the nutrient composition of a food, it is improper for vegetable protein products to actually upgrade that nutrient composition, as would be the case if all substitute foods containing vegetable protein products as protein sources have nutrients added on the basis of a uniform definition of nutritional equivalence to traditional protein foods. One manufacturer suggested that if a substitute food containing a vegetable protein product as a protein source does not meet the nutritional equivalence criteria of the regulation, it nonetheless may avoid being labeled an imitation by being in fact nutritionally equivalent to the specific food for which it substitutes, as provided in § 101.3(e).

The Commissioner has considered alternative procedures for implementing the nutritional equivalence provisions of § 101.3(e) with respect to foods that contain vegetable protein products as protein sources and that substitute for meat, seafood, poultry, eggs, or cheeses.

The first is, of course, that a substitute food containing vegetable protein be required to be nutritionally equivalent to each major protein food for which it substitutes. This alternative would maintain the nutritional level of the diet as use of vegetable protein as a substitute for animal protein increases. However, as the Commissioner noted in the preamble to the proposal, it is impractical to have a different protein quantity and quality and vitamin/mineral profile for each food for which a substitute food containing a vegetable protein product as a protein source may be substituted.

Another alternative is to require that the substitute food containing vegetable protein comply with a definition of nutritional equivalence consisting of those nutrients which occur in the major protein foods and the average levels at which they occur. This, too, would maintain the nutritional level of the diet as the use of vegetable protein increases. This procedure has the disadvantage, according to the comments, that substitute foods will have to be fortified to nutrient levels above those of some of the individual major protein foods for which they substitute.

The Commissioner acknowledges that this is the case, since any "average" value is obtained from values both higher and lower than the average. Correspondingly, the substitute foods would contain lower levels and/or fewer nutrients than some of the specific major protein foods for which they substitute.

A third alternative is to combine the provisions of the first two. That is, as some comments suggested, establish a definition of nutritional equivalence using average values but allow manufacturers the option of fortifying a substitute food to the level equivalent to the specific major protein food for which it substitutes. The probable consequence of implementing this procedure, however, would be that substitutes for major protein foods containing higher than average levels of nutrients would be fortified only at the nutrient levels established in the definition, the average levels. The substitutes for major protein foods which contain lower than average levels of nutrients would be fortified to be equivalent to the specific major protein food rather than the higher average level in the definition. This practice would create an imbalance in the statistical relationships of overfortification to underfortification necessary to maintain average levels. A reduction in the nutritional value of the overall diet would result.

The Commissioner concludes, as discussed in the proposal, that a widely applicable definition of nutritional equivalence to the major protein foods is appropriate. However, as discussed elsewhere in this preamble, instead of a single profile for all major protein foods, the revised regulation provides a separate nutrient profile for each of six subclasses of major protein foods, i.e., breakfast and lunch meats; seafood, poultry, and other meats; eggs; cream cheese; cottage cheese; and other natural cheeses. This classification will greatly reduce the likelihood that substitute food will contain as protein sources vegetable protein products having nutrient profiles not closely resembling the nutrient composition of the foods for which they substitute. The Commissioner emphasizes, however, that average values are used. Thus, when a substitute food which has one of these "average" nutrient compositions substitutes for a food with higher nutrient values, it will be underfortified with respect to that specific food, but it will be overfortified with respect to a specific food which has a nutrient value lower than the average. Therefore, the request for optional absolute nutritional equivalence to a specific finished food is denied.

36. Three comments noted that the nutrition labeling regulation (21 CFR 101.9) states that a food shall contain 10 percent of the U.S. RDA per serving more than another food in order to be represented as nutritionally superior to the latter food. The comments asked how an unfortified substitute food containing a vegetabled protein product as a protein source could be considered nutritionally inferior when the presence of a fortified sub-

stitute food does not entitle the finished food to a claim of nutritional superiority.

The Commissioner advises that the definition of nutritional inferiority in 21 CFR 101.3(e) includes any reduction in the content of an essential nutrient listed in 21 CFR 105.3(b) that is present at 2 percent or more of the U.S. RDA pe serving. The nutrients listed in revised § 102.76 are present in the respective major protein food groups at an average of 2 percent or more per serving. The removal of any amount of animal protein food in a finished food would reduce the amounts of essential nutrients normally present in the finished food. The substitution for the animal protein food of a food containing a vegetable protein product as a protein source with nutrients added to meet the definition of nutritional equivalence in this regulation would not, by definition, constitute any such reduction. The presence in a food of a substitute food containing nutrients in accordance with the profiles compensates for a reduction in the amount of the animal protein food in the finished food. The resulting food is by definition, therefore, nutritionally equivalent, not superior.

37. One comment stated that since use of fortified substitute foods would require nutrition labeling, the provision for nutrient addition would be very costly, especially to small and medium size companies. Another stated that nutrient additions made in compliance with this regulation should exempt the finished food from mandatory nutrition labeling.

The Commission advises that manufacturer who choose to use a vegetable protein product as a protein source in substitutes for meat, seafood, poultry, eggs, or cheeses may add nutrients to those substitute foods to satisfy the nutritional equivalency criteria in this regulation so that the food will not have to be labeled "imitation." On the other hand, they need not add nutrients, and need not have nutrition labeling if they are willing to offer the food as nutritionally inferior, with appropriate labeling.

As discussed elsewhere in this preamble, the Commissioner is considering whether to exempt from nutrition labeling foods which contain as an ingredient a food fortified pursuant to a regulation. This exemption would be based on the concept that information regarding the added nutrients is not necessary when the amounts of the nutrients in the finished food are very small. The Commissioner does not see any justification for exempting from nutrition labeling any of these foods in which the resultant amount of added nutrients in the finished food is nutritionally useful.

38. Some Comments contended that this proposal is in conflict with certain specifications in proposed general principles governing the addition of nutrients to foods which were published in the FEDERAL REGISTER of June 14, 1974 (39 FR 20900). Specifically, they stated that the proposed general principles provision for adding nutrients to foods to balance caloric contribution would require more added nutrients in vegetable protein products than would the common or usual name proposal. Another stated that the general principles proposal rejects the concept of addition of vitamins and minerals on a per gram of protein basis. A foodpacker stated that, according to the present regulation, without added nutrients substitute foods containing vegetable protein products as protein sources are imitations, while the proposed general principles would prohibit the product with added nutrients from bearing nutrition claims in the form of the guideline statement (the statement in § 104.5(b), which states "This product provides nutrients in amounts appropriate for this class of food as determined by the U.S. Government"). The comment contended that the guideline statement would not be available to substitute foods with nutrients added according to the profile in this regulation because they would contain more added nutrients than provided for in proposed § 100.1(g)(3)(v).

The Commissioner states that this regulation is not in conflict with the "General Principles Governing the Addition of Nutrients to Foods" proposal. He advises that the proposal states general principles. Thus, it would apply to those foods as to which nutrient addition is not provided for in other more specific regulations. General principles would also serve as guidelines for future development of specific regulations, but it is not always appropriate for a specific regulation regarding a single class of foods to follow precisely the general principles applicable to a wide variety of foods.

The general principles proposal does not completely reject the addition of nutrients on a per gram of protein basis. On the contrary, the Commissioner concluded that addition of nutrients to a food to obtain nutrient balance is reasonable but that it is more appropriate to balance the nutrient content of most foods based on the caloric content rather than on the protein content. The nutrient balance concept in the general principles proposal applies to foods which are significant sources of calories whether or not they are significant sources of protein. Since the vegetable protein products to which § 102.76 applies are all significant sources of protein, it is appropriate to provide for nutrient addition on the basis of the protein content of these foods.

With respect to the use on substitute foods of the "guideline statement" provided in § 104.5(b), the Commissioner points out that foods to which nutrients are added to avoid nutritional inferiority pursuant to § 101.3(e) are not eligible to bear the guideline statement. This result is consistent with the intended use of the guideline statement, and is not due to the differences in the nutrients and amounts provided in § 102.76 and in proposed § 100.1(g)(3)(v).

39. Several comments stated that the nutritional value of substitute foods containing vegetable protein products as protein sources should be evaluated on the basis of the nutritional value inherent in the plant material itself rather than by comparison to the foods to which they are added or which they simulate. It was stated that a separate nutritional evaluation is needed for products which substitute for animal protein foods but which provide nutritional advantages of their own, e.g., while replacement of animal protein foods with substitute foods containing vegetable protein products as protein sources might lead to a lower amount and quality of protein in the diet, it would be accompanied by significantly lower amounts of saturated fat, phosphorus and calories and by a higher fiber content.

The Commissioner recognizes that vegetable protein products have inherent nutritional value, but when they are used in direct substitutes for existing foods, which substitutes are formulated to resemble the foods for which they substitute, section 403 of the act and § 101.3(e) of the regulations require that the substitute foods be labeled as imitations unless they are nutritionally equivalent to the foods for which they substitute. Section 102.76 does not preclude, nor does it affect, use of vegetable protein products in or as types of foods other than meat, seafood, poultry, eggs, or cheeses or as foods distinct from existing foods. As foods distinct from existing foods, vegetable protein products would be evaluated on their own merits.

Nothing in this regulation prevents vegetable protein products from bearing additional claims about their nutritional value, if the claims are accurate, nonmisleading, and in compliance with applicable regulations.

40. One comment stated that the vitamin and mineral composition of a vegetable protein product used in another food should be the responsibility of the food fabricator and be an optional responsibility for the producer of the vegetable protein product.

The Commissioner recognizes that the proposal indicated that the manufacturer of the vegetable protein product for use as a protein source in a substitute for a major protein food

was to be responsible for appropriate fortification of that vegetable protein product to provide a nutritionally equivalent substitute food. However, under the revised regulation, there is no requirement regarding the stage of production at which the nutrients are to be added to a substitute food. The Commissioner's concern is that a food that contains a vegetable protein product as a protein source and that resembles and substitutes for meat, seafood, poultry, eggs, or cheese be nutritionally equivalent to the major protein food. Whether the manufacturer of the vegetable protein raw material or the fabricator of the substitute food actually adds the nutrients to the formulation is immaterial to FDA.

41. Another comment recommended that nutritional supplementation of substitute foods containing vegetable protein products as protein sources be regulated by final product analysis with no stipulation of the mode of enrichment. It was stated that the addition of nutrients to a substitute food containing a vegetable protein product as a protein source would require nutrition labeling of the finished food, but because of variances in processing losses and the dilution effect of varying amounts of the substitute foods in finished foods, inconsistencies would exist between the required ingredient statement and the required nutrition labeling. Some of the added nutrients may be at such low levels in the finished food that they may fall below the levels required for declaration under the nutrition labeling regulation.

The Commissioner advises that the nutrition labeling regulation (§ 101.9) requires that all the vitamins and minerals listed in § 101.9(c)(7)(iv) be included in nutrition labeling when they are added to a food. Even if these added vitamins and minerals are present in the food at less than 2 percent of the U.S. RDA per serving, they must be declared as set forth in § 101.9(c)(7)(i). Thus, the nutrients added to the substitute foods containing vegetable protein products as protein sources must be declared both in nutrition labeling and the ingredient statement of the finished food, and the two declarations will not be inconsistent. Thus, there is no need to regulate nutrient addition by finished product analysis in order to prevent an inconsistency.

Determination of Protein Equivalence

42. Several comments requested a lowering of the 18 percent protein level in the proposal, which defines when a hydrated vegetable protein product is equivalent in protein to the food it replaces. Their reasons included: (a) many animal protein foods contain significantly less protein than the proposed level, e.g., eggs and cooked sausages, frankfurters, bologna, and liverwurst; (b) the 18-percent level presents serious technological barriers, especially for certain seafood extenders and for soy isolates; and (c) such a high protein content would result in higher prices.

The Commissioner has reevaluated the protein content of meat, seafood, poultry, eggs, and cheeses, on the basis of an examination of a wider variety of such foods. The protein content of these foods ranges from 8 percent to 30 percent of the edible portion. Six groups are distinguishable by their average protein content and use: (a) breakfast and lunch meats (bacon, sausage, frankfurters, bologna, luncheon meat, etc.), 8 to 18 percent protein, 13 percent average; (b) seafood, poultry, and meats other than the breakfast and lunch meats, 15 to 20 percent protein, 18 percent average; (c) eggs, 13 percent protein; (d) cream cheese (neufchatel and cream cheese), 8 to 10 percent protein, 9 percent average; (e) cottage cheeses (low fat 2 percent, low fat 1 percent, creamed and dry curd), 12 to 17 percent protein, 14 percent average; (f) all other natural cheeses (Blue, Cheddar, Gruyere, Mozzarella, Swiss, etc.), 19 to 30 percent protein, 24 percent average. The Commissioner therefore concludes that the protein content requirements for foods which contain vegetable protein products as protein sources and which substitute in whole or in part for these major protein foods should be as follows: (a) A food which contains a vegetable protein product as a protein source and which is represented as a substitute for breakfast or lunch meats (bacon, sausages, frankfurters, bologna, luncheon meat, etc.) shall contain at least 13-percent protein when formulated to resemble the breakfast or luncheon meat. (b) A food which contains a vegetable protein product as a protein source and which is represented as a substitute for seafood, poultry, or meats other than breakfast or lunch meats shall contain at least 18 percent protein when formulated to resemble such meat, seafood, or poultry. (c) A food which contains a vegetable protein product as a protein source and which is represented as a substitute for eggs shall contain at least 13-percent protein when formulated to resemble eggs. (d) A food which contains a vegetable protein product as a protein source and which is represented as a substitute for cream cheese shall contain at least 9 percent protein when formulated to resemble cream cheese. (e) A food which contains a vegetable protein product as a protein source and which is represented as a substitute for cottage cheeses (low fat 2 percent, low fat 1 percent, creamed and dry curd) shall contain at least 14 percent protein when formulated to resemble the cottage cheese. (f) A food which contains a vegetable protein product as a protein source and which is represented as a substitute for all natural cheeses other than cream cheese and cottage cheeses (Blue, Cheddar, Gruyere, etc.) shall contain at least 24 percent protein when formulated to resemble the natural cheese.

The data used in determining the average protein content as well as the average levels of the vitamins and minerals listed in this regulation are based on the edible portions of the various foods. It is appropriate to establish the criteria for determination of nutritional equivalence on the formulated substitute food since that is the condition in which the substitute food containing a vegetable protein product as a protein source most resembles the animal protein food for which it substitutes. Accordingly, the Commissioner has revised the regulation to provide that the protein content determination be based on the substitute food "when formulated" rather than on "as hydrated" to maintain comparability between the substitute food containing a vegetable protein product as a protein source and the major protein food for which it substitutes. "When formulated" includes water, fat or oil, colors, flavors, and any other substances added to the dry vegetable protein product to make it resemble the animal protein food. These added substances may be part of the food at the time of sale or may be added by the purchaser.

When the substitute food is first formulated to resemble the animal protein food and subsequently is mixed with other substances to produce a finished food, calculations based on the substitute food "as formulated" are clear-cut. However, the Commissioner is aware that in many instances this kind of stepwise preparation is not used, and the dry (unhydrated) vegetable protein product is mixed directly with the total amount of water, fat, flavors, etc., necessary for the finished food. In such cases, the substitute food is not truly "formulated to resemble the major protein food for which it substitutes" until all or almost all ingredients of the finished food are added to the mixture. The term "when formulated" will include only that portion of the total amount of water, flavors, and other added substances which would have been mixed with the vegetable protein product alone to make it resemble the major protein food. For example, the dry vegetable protein product may be mixed directly with water and seasoning sufficient to make the vegetable protein product resemble the major protein food and in addition produce a gravy; the portion of the water and seasoning which contributes to the

gravy would not be included in the term "when formulated."

The Commissioner rejects the comment that the protein level for seafood substitutes should be set at 15 percent to overcome technological barriers and increase palatability. The 15-percent protein level would be considerably lower than the average protein level of 17.8 percent actually found in seafood, as well as the average protein level of 18 percent found in meat, poultry, and seafood and established in the nutrient profile in § 102.76. A seafood substitute containing only 15-percent protein should be labeled "imitation" in order to alert the consumer to the difference in nutrition.

43. Two comments pointed out that since some manufacturers of vegetable protein products do not provide the hydration instructions referred to in proposed § 102.22(e)(1), it would be difficult for them to assure that the hydrated product contains protein at the specified level. They stated that in such cases the food processor determines the amount of water to be added to the vegetable protein product.

The Commissioner does not agree. It should not be impractical for a manufacturer of a vegetable protein product, which is represented for use as a protein source in a substitute food, to include in the labeling of that product that amount of protein in the product and/or the easily calculable maximum amount of dilution which will allow the diluted (formulated) product to be nutritionally equivalent as determined in this regulation. Any further dilution of such a product by a food processor would result in the substitute food being nutritionally inferior, and the processor would be required to label the food accordingly.

44. Two comments suggested that the protein level be revised to conform to manufacturers' suggested hydration ratios.

The Commissioner rejects this suggestion and states that to amend the protein level to conform to manufacturers' suggested hydration (or formulation) ratios would give no assurance to the consumer of a substitute food that it is nutritionally equivalent to the major protein food for which it substitutes. Present formulations containing vegetable protein products as protein sources vary widely depending on the vegetable protein product in question and are based mainly on soy products. Therefore, it would not be appropriate to allow these formulation ratios to be the controlling factor in determining the protein levels of such a variety of products.

45. One comment suggested that a maximum level of protein be set for the hydrated vegetable protein product.

The Commissioner is of the opinion that there is no need to set a maximum protein level for substitute foods containing vegetable protein products as protein sources. A reasonable overage is allowed within the limits of good manufacturing practices. Technological and economic factors are likely to prevent manufacturers from adding protein at excessive levels.

Determination of Equivalence for Other Nutrients

46. Several comments suggested that nutrient addition to vegetable protein products be controlled on a basis other than per gram of protein. Some suggested nutrient levels based on caloric contribution and others suggested a per 100 grams of product basis.

The Commissioner advises that these other means of controlling nutrient addition were considered before publication of the proposal. Since a minimum amount of protein in the formulated substitute food is given in the nutrition profile for all formulated foods which contain vegetable protein products as protein sources and which substitute for meat, seafood, poulty, eggs, or cheeses, the per gram of protein basis is sufficient for sustaining adequate nutrient levels in finished foods. Caloric content would not be an adequate basis because formulated substitute foods containing vegetable protein products as protein sources will vary widely in caloric content. While addition of nutrients on a per 100 grams of formulated substitute food basis would provide adequate nutrient levels, it is the same as the per gram of protein basis because of the minimum protein content provisions. Any nutrient addition on a per 100 grams of product basis at any point of manufacture other than "as formulated" would not provide reliable nutrient levels in the finished food. Accordingly, the Commissioner has retained nutrient levels on the per gram of protein basis in the revised regulation.

47. Three comments stated that vegetable protein products should be fortified to a single level, for instance, the level specified in USDA Food and Nutrition Service (FNS), "Textured Vegetable Protein Products To Be Used in Combination with Meat for Use in Lunches and Suppers Served Under Child Feeding Programs (FNS Notice 219) Washington, D.C.: USDA, February 22, 1971."

The Commissioner has discussed in paragraphs 35, 42, and 48 the rationale for establishing six nutrient profiles for foods which contain vegetable protein products as protein sources and which substitute for meat, seafood, poultry, eggs, or cheeses and the reasons why a single fortification level is not appropriate. Further, he advises that the nutrient levels appropriate for foods which contain vegetable protein products as protein sources and which substitute for the major protein foods are those which approximate the nutrients found in those major protein foods. The nutrient profile in FNS Notice 219 does not meet this criterion; it does not contain all the nutrients that are found in the major protein foods, nor does it prescribe comparable levels for these nutrients.

48. A number of comments stated that the proposed list of nutrients is not consistent with the actual nutrient content of meat and other protein foods, and they suggested several changes. Some requested that vitamin A, calcium, and folic acid be deleted because meats are not significant sources of these nutrients. They stated that phosphorus should also be deleted for the same reason and because phosphorus is already superabundant in the American diet. Further, it was requested that the levels of pantothenic acid and zinc be reduced to agree more closely with the levels present in beef, pork, chicken, and fish. Still other comments requested changes in nutrient levels for cheeses: riboflavin should be increased; thiamine and niacin should be reduced.

The vitamin and mineral content of the foods in each of the six groups distinguishable by their use and protein content was evaluated. The vitamins and minerals included in the nutrient profiles in the revised regulation are primarily those listed in § 105.3(b) (21 CFR 105.3(b)) that are present in the foods in each group in a measurable amount. Section 101.3(e) defines "measurable amount" as 2 percent or more of the U.S. RDA per serving. The nutrient levels specified in the regulation are primarily the average amounts present in the foods in each group. The Commissioner advises that because of the similarity of the vitamin and mineral content (per gram of protein) of the breakfast and lunch meat group to that of the meat, seafood, and poultry group, the same nutrient profile is used for both. For those few nutrients which occur at different average levels in the two groups, the higher level is used in the common nutrient profile.

As a result of this evaluation, vitamin A is retained in the revised nutrient lists for all food groups except cottage cheese (which does not contain 2 percent or more of the U.S. RDA of that vitamin per serving), at the average levels at which it occurs: 13 International Units (IU) per gram of protein for the breakfast and lunch meat group and the meat, seafood, and poultry group; 91 IU for eggs; 146 IU for cream cheese; and 39 IU for the other natural cheeses.

Thiamine was deleted from the lists of nutrients for the cheeses, but was retained for the other three groups. Cheeses do not contain 2 percent or more of the U.S. RDA for thiamine per serving. The levels in the lists are

the average levels at which thiamine occurs in the foods.

Riboflavin is present at greater than 2 percent of the U.S. RDA per serving in all six food groups and is listed at the average levels found, 0.01 milligram (mg) to 0.04 mg per gram of protein. Niacin was deleted from the egg and cheese nutrient lists because these groups do not contain 2 percent or more of the U.S. RDA for niacin per serving, and niacin is retained in the lists for breakfast and lunch meats and for meat, seafood, and poultry at the average level found in both of the latter groups, 0.3 mg per gram of protein.

Pantothenic acid was proposed at 0.04 mg per gram of protein, but since eggs contain more than that, the amount prescribed for egg substitutes is 0.22 mg. The two meat groups are listed at 0.04 mg per gram of protein and cottage cheese at 0.02 mg. The other two cheese groups contain less than 2 percent of the U.S. RDA for pantothenic acid per serving.

Of the cheese groups, only cottage cheese contains 2 percent or more of the U.S. RDA of vitamin B_6 per serving; the vitamin is listed at 0.01 mg per gram of protein for cottage cheese. It occurs at 0.02 mg per gram of protein for the other three food groups and is prescribed at that level.

Vitamin B_{12} is present in measurable amounts in five of the food groups and is listed at 0.1 microgram (μg) per gram of protein for breakfast and lunch meats and for meat, seafood, and poultry; 0.15 μg for eggs; and 0.05 μg for cottage cheese and the group of other natural cheeses. Cream cheese contains less than 2 percent of the U.S. RDA for vitamin B_{12} per serving.

Iron is in the nutrient lists for breakfast and lunch meats and for meat, seafood, and poultry at 0.05 mg and for eggs at 0.19 mg. The cheese groups do not contain a measurable amount of iron.

Calcium was deleted from the lists of the two meat groups because it does not occur in measurable amounts, but it is retained in the egg list at 4.3 mg per gram of protein and in the cheese lists at 9 mg for cream cheese, 4 mg for cottage cheese, and 28 mg for all other natural cheeses.

It is generally accepted that a calcium to phosphorus ratio of about 1:1 is appropriate for human nutrition, but there is currently an overabundance of phosphorus in the U.S. diet. For this reason, there is a widespread desire not to add phosphorus to the diet unnecessarily and even a tendency to reduce it. However, since many of the cheeses are major sources of calcium in the diet, phosphorus is retained in the nutrient list for natural cheeses other than cream cheese and cottage cheese to maintain the calcium/phosphorus balance. The listed amount for phosphorus, 19 mg per gram of protein, is the average amount actually present in the cheeses. It is also an amount adequate to balance the 28 mg calcium in that group. Cream cheese, cottage cheese, and eggs contain calcium, but the amounts are small enough that it is not necessary to add a corresponding amount of phosphorus to balance it. Phosphorus is present in measurable amounts in the breakfast and lunch meat and the meat, seafood, and poultry groups, but since these groups do not contain calcium, addition of phosphorus to the vegetable protein products that substitute for them is not specified.

Cottage cheese is the only food group which contains a measurable amount of folic acid, and the nutrient is listed at 1 μg per gram of protein.

Magnesium is retained in the nutrient lists for breakfast and lunch meats and for meat, seafood, and poultry at 1.15 mg per gram of protein. However, eggs and the cheese groups do not contain enough magnesium to justify listing it.

Zinc is retained in all nutrient lists except that for cream cheese because it is present in those major protein foods in measurable amounts. However, the amounts listed in the revised regulation are higher than the amounts that occur in the foods. It is well known that the phytate content of foods made from plants will decrease the bioavailability of zinc. Therefore, the zinc level for substitute foods containing vegetable protein products as protein sources was increased to approximately twice the average amount actually present in the traditional foods to ensure that the consumer receives an amount of zinc equivalent to that found in the major protein food substituted.

Nutrients which were not included in the proposal but which were considered in the reevaluation of nutrient profiles for the six food groups include copper, vitamin E, biotin, vitamin D, vitamin C, and iodine.

Copper is found in some of the protein foods in measurable amounts and is therefore included in the revised regulation. The levels are: 24 μg per gram of protein for breakfast and lunch meats and for meat, seafood, and poultry and 14 μg for eggs. The limited data available regarding copper in the cheeses indicate the presence of less than 2 percent of the U.S. RDA per serving for all three cheese groups.

The only group of major protein foods which contains vitamin E and biotin in measurable amounts is eggs. The nutrient list for eggs includes 0.15 IU vitamin E and 1.7 mg biotin per gram of protein.

Vitamin C is not included in the regulation because it does not occur in measurable amounts in any of the six food groups.

Vitamin D is included in only one of the six nutrient profiles. It occurs in eggs at an average of 7 percent of the U.S. RDA per serving and is included in the nutrient list for eggs at the equivalent level of 4 IU per gram of protein. Within the limits of available data, it is not found at an average of 2 percent or more of the U.S. RDA per serving in cheeses or in breakfast and lunch meats and therefore is not in the four nutrient lists for those foods.

While vitamin D does not occur in measurable amounts in most meats and poultry, it occurs in very large amounts in some seafoods, resulting in an average level for this food group greater than 2 percent of the U.S. RDA per serving. The use of this average level for vitamin D fortification of this group of foods containing vegetable protein products as protein sources, which substitute for meat and poultry more often than for seafood, would likely result in an increased intake of vitamin D. Vitamin D levels in excess of 1,000 IU per day (2.5 times the U.S. RDA) are potentially harmful. While no information is available concerning the precise requirement for vitamin D in older children and adults, the requirement for the normal healthy adult seems to be satisfied by nondietary sources, such as exposure to sunlight. The almost universal fortification of fluid and evaporated milk with vitamin D in the United States has resulted in almost total elimination of rickets, the most generally recognized result of vitamin D deficiency in children. Therefore, the Commissioner concludes that addition of vitamin D should not be required in foods which contain vegetable protein products as protein sources and which substitute for meat, seafood, and poultry.

Iodine is not included in any of the nutrient profiles even though it is present in measurable amounts in some of the major protein foods. There are no definitive data on the amount of iodine present in breakfast and lunch meats, so that no level for addition of iodine to substitutes for these foods can be set. It occurs in eggs at about 10 percent of the U.S. RDA per serving and in cheeses at only about 1 percent.

Iodine is present in seafood at such high levels that when combined with the low levels (less than 2 percent of the U.S. RDA per serving) found in meat and poultry, the average level for the meat, seafood, and poultry group would be greater than 2 percent of the U.S. RDA. As in the case of vitamin D, requiring this average amount of iodine in this group of substitute foods, which substitute more often for meat and poultry than for seafood, could result in a net increase in dietary iodine. Even though seafood has long been a significant source of

dietary iodine, iodized salt has come to be the most widely known source. Further, modern food technology has resulted in an increase in sources of dietary iodine.

There are several indicators suggesting that the daily intake of iodine by the U.S. population is far in excess of the U.S. RDA: (a) data from the FDA Total Diet Studies Program for fiscal years 1974 and 1975 indicate that the iodine level in foods exceeds the adult U.S. RDA by 400 percent and the U.S. RDA's for infants and children by 800 and 600 percent, respectively; (b) tests of urinary iodine levels indicate that similarly high levels of iodine are being consumed; and (c) the calculated daily intake of iodine from food additives and food processing is far in excess of the U.S. RDA. While there is no clear evidence of harmful effects of current iodine intake levels, there is growing concern over an apparent pattern of increasing amounts of iodine in the diet.

Therefore, the Commissioner concludes that it is neither necessary nor desirable that iodine be added to foods which contain vegetable protein products as protein sources and which substitute for meat, seafood, poultry, eggs, or cheeses in order to maintain nutritional equivalence.

49. Several comments recommended that potassium be included in the list of nutrients since meats and the other major protein foods are major sources of dietary potassium.

The Commissioner agrees that potassium should be included in the nutrient profiles for substitute foods containing vegetable protein products as protein sources.

Since there is no U.S. RDA established for potassium, that nutrient is not encompassed by the general definition of nutritional inferiority in § 101.3(e). The Commissioner has not established a U.S. RDA for potassium because, while it is essential to human nutrition, there has been no reason to expect a potassium deficiency in the American diet. However, the Commissioner believes that substitute foods containing vegetable protein products as protein sources should not be considered nutritionally equivalent to animal proteins unless the substitute food contains an equivalent amount of potassium. The animal protein foods are major sources of potassium in the diet, and widespread removal of these foods from the diet could result in a significant decrease in dietary potassium. The Commissioner concludes that because it can be expected that foods containing vegetable protein products as protein sources will be widely used as substitutes for meat, seafood, poultry, eggs, and cheeses, the definition of nutritional equivalence for these animal protein foods should include potassium at the average levels at which it occurs in the foods. Therefore, the nutrient lists include 17 mg potassium per gram of protein for the breakfast and lunch meat group and the meat, seafood, and poultry group; 10 mg for eggs; and 6 mg for cottage cheese. The cream cheese group and the other natural cheeses group do not contain enough potassium to warrant addition of that nutrient to their substitutes.

The Commissioner points out that he does not have any information to suggest that compliance with this requirement would present any difficulties since most of the affected substitute foods contain significant levels of potassium. The requirement for potassium is intended to ensure that a significant decrease in dietary potassium does not occur.

Similarly, even though declaration of potassium content is not required by § 101.9 *Nutrition labeling of food*, the Commissioner considers that the importance of foods containing vegetable protein products as protein sources which substitute for the major animal protein foods as sources of dietary potassium justifies such a declaration. Therefore, declaration of potassium content is required for all substitute foods which contain vegetable protein products as protein sources and which comply with the nutrient-addition provision of this regulation. This declaration shall be in milligrams of potassium per serving and shall appear in the nutrition labeling format immediately after the declaration of sodium content. For the purpose of this declaration, a serving or portion of a substitute food is the same as that for nutrition labeling. When a finished food consists entirely of the substitute food as described in § 102.76(a), a serving is the usual, reasonable amount of the food consumed as part of a meal, as described in § 101.9. When the substitute food is used as an ingredient in a finished food, a portion is the amount of substitute food in a serving of the finished food. If multiple portion sizes are recommended in the labeling for different uses, the most commonly used portion size will govern the nutrition labeling declaration.

50. One comment suggested that if a substitute food contains more than 20 mg of phosphorus per gram of protein, the calcium level should be increased to provide a calcium/phosphorus ratio of 1:2, similar to that in dairy products.

The Commissioner advises that the purpose of the nutrient specifications in this regulation is to provide a definition of nutritional equivalence to major protein foods. Since the calcium addition suggested in this comment could result in calcium levels in substitute foods which are higher than those of the animal protein foods for which they substitute, the Commissioner concludes that this addition of calcium is not appropriate under this regulation.

51. Several comments pointed out the typographical error in the table of nutrient requirements in the proposal which read "vitamin B_2" when it should have read "vitamin B_{12}." The correction has been made.

52. Two comments suggested that consideration be given to the technological problems of adding vitamin A, folic acid, calcium, magnesium, and zinc.

The Commissioner advises that addition of these nutrients to substitute foods containing vegetable protein products as protein sources is necessary to attain nutritional equivalence to the major protein foods. The Commissioner concludes that since the comments did not submit any data or other substantive information to support their contention that addition of certain nutrients to substitute foods containing vegetable protein products as protein sources is technologically impractical, there is not sufficient justification to delete these nutrients from the regulation.

53. A trade association was concerned that the regulation would open the door to addition of vitamins and minerals to many meat products, a development the association does not favor.

The Commissioner advises that this regulation provides for nutrient additions only to certain substitute foods to make them nutritionally equivalent to traditional foods for which they substitute in the diet. The regulation does not address fortification of meats.

USE OF PROTEIN EFFICIENCY RATIO (PER) IN PROTEIN EQUIVALENCE DETERMINATION

54. One comment disagreed with the concept that "higher quality" protein must be defined as being at least equal to casein based on protein efficiency ratio (PER), a small animal feeding test. The comment contended that there is evidence to show that infants, children, and adults all thrive on properly designed vegetable protein diets. The comment further stated that some evidence indicates that a PER of 60 percent that of casein is adequate for the protein in the human diet. Thus, the comment suggested adoption of the proposed PER requirement of 80 percent that of casein for all mixtures of vegetable protein products with animal protein foods, instead of limiting application of that PER only to those mixtures containing 30 percent or less of vegetable protein products.

The Commissioner advises that setting a standard of quality for overall protein intake is not within the scope of this regulation. Instead, § 102.76 is expressly intended to define nutrition-

al equivalence as limited to the major protein foods: Meat, seafood, poultry, eggs, and cheeses. Thus, the PER levels emulating those foods are retained in the regulation.

The Commissioner recognizes that there is some evidence that under some conditions vegetable proteins having a PER significantly less than that of casein may be nutritionally equivalent to some major protein sources in the diet. However, the data on human subjects available to the Commissioner at this time are insufficient to permit him to conclude with confidence that foods which contain as protein sources vegetable protein products with a lower PER value are nutritionally equivalent to the animal-derived protein foods that they replace. While there are some data on protein quality needs for humans showing that vegetable proteins with a lower PER value are nutritionally valuable, most of the studies to date involve adult test subjects. Since many of the protein foods included in this regulation will be consumed by children, it is appropriate to continue to use the PER assay, which is conducted on growing animals, for test purposes. Because of the importance of ensuring that growing children receive adequate nutrition, the Commissioner believes he must not alter a test criterion for protein quality traditionally used to make nutritional determinations until he is satisfied that the adequacy of any new criterion has been established. The Commissioner will consider exceptions to the PER level criterion for a specific protein used in a specific manner, upon receipt of a petition therefor, supported with adequate data. Such data should include studies on healthy growing children based on acceptable methods and should substantiate the protein quality equivalency of the vegetable protein and the usual major protein source being substituted for in part or in whole. The main concern is for the nutritional equivalence of the protein source for the growth, maintenance, and well-being of children. Data on adult humans will be considered in conjunction with adequate data obtained from feeding studies with children. The petition must correlate the human data submitted with data obtained using the official PER assay or a more appropriate and acceptable method, if available.

Since there are insufficient data on humans at this time, the Commissioner strongly encourages further human feeding studies to obtain additional data on the nutritional adequacy of a variety of vegetable proteins.

The Commissioner is aware that several current clinical studies suggest that maintenance of normal protein nutriture may be achievable with protein and/or amino acid sources which have a biological value, as measured by the PER determination, somewhat less than that of casein. The Commissioner is following these current studies with interest and will consider amendment of this regulation either on his own initiative or in response to a well-documented petition when the total body of scientific information as to age, sex, and physiological state is sufficient to warrant change.

55. Two other comments questioned use of the PER method in determining protein quality and stated that the PER method is obsolete.

As stated in the preamble to the proposal, the Commissioner recognized the limitations of the PER method. The applicability to human nutrition of the PER assay and other rat growth assays commonly used to estimate the protein quality of foods has been questioned. It is recognized that there is a lack of adequate data regarding the physiological amino acid and nitrogen requirements of both man and animals and the factors which may affect these requirements. Current scientific information on the protein quality of foods in humans is of uncertain value. There is a critical need for more data on the protein quality of foods for humans under standardized conditions. The development and/or improvement of methods to evaluate the protein quality of foods more adequately in human nutrition depends greatly on the availability of more precise and extensive data on the amino acid requirements of humans and animals and on animal research which can be compared with human data.

However, the PER assay is the only official method currently available for determining protein quality. There are other methods being used to measure protein quality, but the merits of these methods have not yet been established through the collaborative studies which are necessary for them to be made official. The Commissioner therefore concludes that for the purposes of this regulation it is appropriate to continue to use the PER assay as the basis for determining protein quality. As stated above, he will consider exceptions to use of the PER assay when a petition is adequately supported.

56. Other comments recommended that the PER requirement for vegetable protein products used at more than 30 percent of the mixture when mixed with a major protein food be 100 percent of the PER of casein (2.5) instead of 108 percent as proposed. Some stated that since FDA has already established criteria for a high quality protein (a protein with a PER equivalent to that of casein) in § 101.9, to set a new PER criterion would be confusing.

The Commissioner again advises that establishment of criteria for "high quality protein" or for protein adequate for an overall diet is not within the scope of this regulation. Further, it is not appropriate for the criteria in a definition of nutritional equivalence, e.g., this regulation, to be adjusted to conform with criteria established in another regulation for labeling purposes only, e.g., nutrition labeling. The Commissioner states that the PER requirement of 108 percent that of casein was based on communication with representatives of USDA indicating that they were considering that PER value for a definition of meat and classes of meat. In the FEDERAL REGISTER of April 27, 1976 (41 FR 17560), USDA proposed definitions of classes of meat with a PER of 2.5, 100 percent that of casein, or more. The Commissioner therefore concludes that the PER of formulated substitute foods which contain vegetable protein products as protein sources and which constitutes more than 30 percent by weight of the mixture when mixed with meat, seafood, poultry, eggs, or cheeses shall be at least 100 percent that of casein.

57. Several comments suggested that the 2.0 PER requirement (80 percent of the PER of casein) for the hydrated vegetable protein product which is to be used at no more than 30 percent by weight of the mixture when mixed with meat, seafood, poultry, eggs, or cheeses be lowered to 1.8. The reasons given were: (a) The 2.0 PER requirement would prevent the use of isolates which have lower PER's, (b) there are technological problems involved in fortification of the vegetable proteins with methionine, and (c) use of the PER method for determining protein quality has some limitations.

The Commissioner notes that the PER values of commercial isolates vary considerably. Published PER values of isolates range from 1.0 to 2.1. Because of this variability, lowering the PER requirement to 1.8 would not assure that all isolates would be able to meet the specified level without nutrient additions. The Commissioner advises that the addition of amino acids to achieve a PER of either 1.8 or 2.0 is not permitted under § 172.320 (21 CFR 172.320), the food additive regulation governing amino acids used as nutrients. As discussed in paragraph 65, there are reasonable alternatives to fortification with methionine for increasing the PER of vegetable protein products to 2.0.

As noted above, the Commissioner recognizes the limitations of the PER test. At this time, however, it is the only official method for determining protein quality available for regulatory purposes. The Commissioner concludes that the PER requirement for the formulated substitute food which contains a vegetable protein product as a protein source and which is used

at no more than 30 percent by weight of the mixture when mixed with meat, seafood, poultry, eggs, or cheeses shall remain at 2.0 (80 percent of the PER of casein).

58. Two comments recommended a single requirement that the biological quality of protein in substitute foods containing vegetable protein products as protein sources be 100 percent that of casein regardless of the proportion of formulated substitute food in a mixture with meat, seafood, poultry, eggs, or cheeses.

As discussed above, the Commissioner agrees that there should be a PER requirement of 100 percent that of casein for formulated substitute foods mixed at more than 30 percent of the mixture with animal protein foods, but he does not consider such a PER necessary for formulated substitute foods present at 30 percent or less of the mixture. However, the Commissioner sees no reason to object to processors using 30 percent or less of a substitute food with the higher PER value in a mixture with meat, seafood, poultry, eggs, or cheeses if they so choose.

59. Two comments stated that the PER criteria in the nutrition labeling regulation (§ 101.9) are more flexible than the values 80 percent and 108 percent of the PER of casein found in the proposal and should be used in this regulation.

The Commissioner advises that the PER criteria in the nutrition labeling regulation were established so that protein quality could be considered in calculating the U.S. RDA's of a very wide variety of foods for labeling purposes. Many of the foods covered by the nutrition labeling regulation do not contain significant amounts of protein and/or they contain low quality protein. This regulation establishes a definition of nutritional equivalence for substitutes for a much narrower group of foods, the major sources of high quality protein in this country. The Commissioner concludes that it would not be appropriate to establish PER requirements for substitutes for major protein foods over the wide range that would be permitted if the nutrition labeling criteria were used. The recommendation is therefore denied, although, for other reasons as discussed in paragraph 56, the 108-percent requirement as proposed has been reduced to 100 percent of the PER of casein.

60. One comment stated that the PER distinction between vegetable protein products used at 30 percent or less of a mixture with animal protein food and those used at more than 30 percent is not consistent with the concepts expressed in § 101.3(e).

The Commissioner does not agree. As discussed in the preamble to the proposal, when a mixture of a substitute food containing a vegetable protein product as a protein source and an animal protein food contains no more than 30 percent formulated substitute food, the controlling PER is that of the animal protein food and it is not necessary that the PER of the substitute protein be absolutely equivalent to that of the animal protein. The PER requirement of a minimum of 80 percent that of casein for substitute foods used at such low levels in these mixtures will insure that the presence of vegetable protein will not result in an appreciable difference between the PER of the mixture and that of the animal protein food without vegetable protein, thus maintaining nutritional equivalence as related to protein quality.

When a mixture of substitute food and meat, seafood, poultry, eggs, or cheeses contains more than 30-percent formulated substitute food, it is less certain which is the controlling PER and to what degree a low PER in the substitute food will affect the PER of the mixture. Thus, the substitute protein in such a mixture must have a PER essentially equivalent to that of the animal protein in order to ensure that nutritional equivalence is maintained.

61. Two comments, stating that it is impossible for vegetable proteins to meet the PER requirement of 108 percent that of casein, recommended use of vegetable protein products at levels of 30 to 50 percent of a mixture with animal protein foods with a PER requirement of 90 percent that of casein. In addition, another category would be established for vegetable protein products used at more than 50 percent in a mixture.

The Commissioner does not agree that it is appropriate for substitute foods which contain vegetable protein products as protein sources and which constitute 30 to 50 percent of a mixture with meat, seafood, poultry, eggs, or cheeses to have a PER of 90 percent that of casein. Definitive information regarding the resultant PER's of such mixtures is not available and therefore a conservative approach is in the best interest of the consumer. The Commissioner concludes that a minimum PER of 100 percent that of casein is appropriate for substitute foods in mixtures containing 30 to 50 percent substitute food as well as for mixtures containing more than 50 percent substitute food.

62. Several comments suggested that instead of specifying a PER of 108 percent that of casein for formulated substitute foods which constitute more than 30 percent by weight of the mixture when mixed with meat, seafood, poultry, eggs, or cheeses, the substitute food should have a PER equivalent to that of the particular protein food for which it substitutes.

The Commissioner considers it impractical for a substitute food containing a vegetable protein product as a protein source to have the precise nutritional properties of every major protein food for which it may substitute. As discussed in the preamble to the proposal and elsewhere in this preamble, this is the reason for establishing the definitions of nutritional equivalence for meat, seafood, poultry, eggs, and cheeses.

63. One comment asked for clarification of whether the protein quality criteria apply to the substitute food alone or in combination with meat, seafood, poultry, eggs, or cheeses.

The Commissioner states that the PER values in this regulation apply to the substitute foods themselves and not to the finished mixture of substitute food with meat, seafood, poultry, eggs, or cheeses. However, the Commissioner advises that such substitute foods may if properly labeled contain in addition to the vegetable protein product some refined animal protein such as egg albumen or milk protein which would contribute to the PER of the substitute food.

64. One comment stated that there should be provision for use of a substitute food whose protein quality is such that when used in accordance with the package directions as a substitute for a major protein food at 30 percent or less in the mixture, the PER of the mixture is 2.5 (100 percent that of casein).

Basing the PER value on the PER of the mixture of animal protein food and substitute food would make the PER value for the individual substitute food dependent upon the PER of the specific food for which it substitutes. As the Commissioner has stated previously, in this preamble and in the preamble to the proposal, he considers it impractical to base judgments about the nutritional equivalence of substitute foods on the nutrient content of the individual major protein foods for which they substitute.

65. Some comments pointed out that the proposal conflicts with the food additive regulation regarding amino acids (21 CFR 172.320). They stated that the food additive regulation requires that addition of amino acids for protein quality result in a PER equivalent to that of casein (2.5), while the provision in the proposal for a vegetable protein product to have a PER 80 percent that of casein (2.0) contains the statement "including amino acids added thereto." One comment recommended that the food additive regulation be revised to permit addition of amino acids to meet the lower PER in the vegetable protein products proposal.

The Commissioner acknowledges that the proposal was not consistent with the food additive regulation re-

garding amino acid addition for nutritive use. Since the Commissioner did not intend to permit addition of amino acids to substitute foods to achieve a PER of 2.0 (80 percent that of casein), he has revised this regulation by deleting the phrase "including amino acids added thereto" from the 2.0 PER provision. Thus, the two regulations are now consistent in that neither one permits addition of amino acids to substitute foods to achieve a PER less than that of casein (2.5).

The Commissioner advises that this revision should not result in significant difficulties for manufacturers of substitute foods containing vegetable protein products as protein sources who wish to comply with the 2.0 PER requirement. A number of vegetable protein products currently used in substitutes for the major protein foods meet the 2.0 PER requirement without amino acid fortification. Further, because of the complementary effect of the various amino acid patterns in protein from different sources, it is possible to blend protein from one plant with protein from another plant or from an animal source to obtain a resultant PER higher than those of the original proteins. The Commissioner stated in the preamble to § 172.320, published in the FEDERAL REGISTER of July 26, 1973 (38 FR 20036), that he will consider exceptions to the PER limitation of 100 percent of casein for amino acid addition on a case-by-case basis upon receipt of a petition therefor, providing that the minimum level requested is not less than 80 percent of casein.

OTHER COMMENTS ON VEGETABLE PROTEIN PRODUCTS

66. One comment requested an explanation of the basis for treating synthetic amino acids differently than synthetic vitamins when the substances are compared to their naturally occurring forms.

The Commissioner does not agree that these nutrients are treated differently. Synthetic vitamins and minerals are considered equivalent to their naturally occurring forms provided the synthetic substances are in safe and suitable form and are biologically available. Similarly, the body does not distinguish metabolically between synthetic amino acids and those derived from natural food sources. Crystalline synthetic amino acids used in accordance with the food additive regulation for amino acids, § 172.320, are considered safe and suitable and are biologically available.

67. Several comments stated that the proposal does not contain compliance criteria, such as tolerances or a definition of the term "sample." One comment requested that the permitted variance in the nutrient levels be clarified. Another comment recommended that limits be established identifying maximum amounts of vitamins and minerals which may be added and suggested a limit of 50 percent over minimum requirements.

The Commissioner advises that, consistent with other FDA regulations regarding nutrient content, compliance with nutritional equivalence provisions under this regulation shall be determined in the manner set forth for nutrition labeling in § 101.9. That regulation includes definitions for "lot" and "sample" size, permitted variance in nutrient levels, and the agency's policy regarding overages of added nutrients. Due to varying stabilities among the added nutrients, varying degrees of overages are necessary, in accordance with good manufacturing practice, to ensure that each added nutrient is present at the specified level at the time of purchase.

68. One comment requested that alternate methods be provided for determining protein quality, moisture, and vitamin and mineral content.

The Commissioner advises that the methods provided in this regulation will be used by FDA for determining compliance with its provisions. Manufacturers are not precluded from using other analytical methods for their own quality control purposes as long as they assure themselves that any such unofficial methods compare adequately with official methods.

69. One comment asked how a packer is to determine "the accuracy of the fortification" of a vegetable protein product which the packer uses as a protein source in the substitute food the packer packs.

The comment presumably refers to the accuracy of the representations made by the supplier to the packer that the vegetable protein product has been fortified to a certain level. The Commissioner advises that assurance of the quality of raw materials a processor or packer uses is a matter to be settled between the processor and the supplier. There is nothing to prevent the processor from analyzing the raw materials, and the regulation provides information regarding analysis for regulatory purposes of the nutrient levels in substitute foods containing vegetable protein products as protein sources.

70. One comment supported the concept of requiring declaration of sodium when a vegetable protein product introduces a marked excess of sodium into a food that is otherwise low in sodium, but disagreed with the proposed provision requiring sodium declaration. The comment stated that it would be difficult for manufacturers to comply with proposed § 102.22(g) (now § 102.76(h)) and for FDA to enforce it because: (a) There are no standard sodium levels for most of these foods, and (b) there is no way to know whether the vegetable protein product increased the sodium level of the food by 25 mg sodium/100 g. It was further stated that any such declaration would not be meaningful for many foods because they are normally high in sodium. It was suggested that the regulation be revised so that this provision would apply only to those foods that are usually low in sodium content (below a specified level per 100 g), rather than to all foods.

The Commissioner acknowledges that the proposed criterion for declaring sodium, i.e., a significant increase in sodium content of a food resulting from the presence of a substitute food containing a vegetable protein product as a protein source, might present difficulties in compliance for manufacturers and in enforcement by the agency. He does not agree, however, that sodium declaration for those foods which are normally high in sodium would not be meaningful. To a person who is interested in controlling his sodium intake, every sodium declaration is meaningful, particularly for a food that is new to him or that is a substitute for a food with which he is familiar. As a result of processing, the sodium content of many vegetable protein products in substitutes for meat, seafood, poultry, eggs, or cheeses is significantly higher than that of the traditional protein food. In many instances the substitute food contains as much sodium as does ham. A significant number of consumers need and/or desire to control their sodium intake.

The Commissioner concludes that because of the elevated levels of sodium in many substitute foods containing vegetable protein products as protein sources, the consumer's right to information regarding such levels, and the compliance/enforcement difficulties involved in the proposed sodium labeling provision, sodium content should be declared for all foods which contain vegetable protein products as protein sources and which substitute for meat, seafood, poultry, eggs, or cheeses. The regulation has been revised accordingly.

The Commissioner further concludes that, for these substitute foods, declaration of sodium content in milligrams preserving is sufficiently informative and the statement of milligrams of sodium per 100 grams of product is deleted from the required declaration.

NOMENCLATURE OF FINISHED FOODS

71. One comment recommended that, for a food which contains a substitute food, the regulation not require the name of the substitute food as part of the food name. The comment stated that the labeling of a combination food is more properly provided for by regulations relating to that food

than by regulations relating to one of its ingredients. Similarly, some comments stated that the declaration of the vegetable protein product(s) should be restricted to the ingredient list except when it is the sole protein constituent of a characterizing component.

The Commissioner agrees that, for some foods, labeling is most properly provided for by regulations relating to a specific food or group of foods. In such cases, regulations will be considered if they do not already exist. The provisions of this regulation regarding labeling of finished foods do not supersede such specific regulations, and the revised regulation so states. However, considering the rapid increase in the use of vegetable protein products in substitutes for major protein components of finished foods, the Commissioner concludes that it is appropriate to provide general requirements for labeling of finished foods containing these substitute foods to ensure adequate prominence for information regarding their presence. The Commissioner conludes that when a food containing a vegetable protein product as a protein source substitutes for any amount of the meat, seafood, poultry, eggs, or cheeses in a component of a finished food, common or usual name prominence is appropriate for declaration of that fact.

72. Two comments requested that labeling of finished foods containing substitute foods be handled by reference to § 102.5 instead of by specific provision in this regulation.

The Commissioner advises that § 102.5 was intended to provide for informative labeling of foods where more specific common or usual name regulations have not been promulgated and to provide guidelines for development of specific regulations for labeling of foods. The Commissioner concludes that specific provisions for finished foods containing substitute foods are necessary to ensure fully informative labeling. Further, he states that the provisions of § 102.76(j) of the revised regulation are consistent with § 102.5.

73. A manufacturer asked whether proposed § 102.22(h)(1) (§ 102.76(a) of the revised regulation) is intended to take precedence over the regulation regarding the labeling of imitation foods generally (21 CFR 101.3(e)).

The Commissioner advises that since the names established in § 102.76 for certain foods that resemble and substitute for meat, seafood, poultry, eggs, or cheeses are based on a specific definition of nutritional equivalence, the provisions of § 102.76 supersede the general definition of nutritional inferiority in § 101.3(e). Determinations of nutritional inferiority for these substitute foods shall be made in accordance with § 102.76, but if the food is found to be nutritionally inferior, § 101.3(e) of the regulations and section 403 of the act require that the food be labeled "imitation."

74. A manufacturer referred to the provision in proposed § 102.22(h)(1) that the name of a finished food that, as a whole, resembles meat, seafood, poultry, eggs, or cheese, but contains none of these, but does contain a vegetable protein product for which a common or usual name is established, shall be the name established in (proposed) paragraphs (a) through (d). The comment asked whether the addition of some quantity of cheese to a product which resembles meat will avoid this result.

The Commissioner advises that he has revised the regulation and in the interest of clarity has deleted proposed § 102.22(h)(1). However, the finished food which contains cheese as described in the comment would be subject to labeling requirements of § 102.76(k) (1) or (2), depending on whether or not the finished food as a whole resembles the cheese.

Other Comments

75. One comment requested that provision be made for use of structured soy protein isolates in combination with mechanically deboned fish, chicken, beef, and pork to restore the structure (texture) to these products without requiring textured soy protein isolate to appear in the product name. It was stated that restoring a food to its original texture should not require a new name for the food.

This use of vegetable protein products may be technological, and therefore the food may not be subject to the requirements of § 102.76; but the Commissioner disagrees that the name of a food need not indicate that the food has been restored to its original texture. The restoration of a food to its original texture is a material fact which must be declared to the consumer. The Commissioner advises that a food which is restructed is misbranded unless the name of the food reveals this fact, and he has so stated in the preamble to regulations regarding common or usual names for certain restructured foods (formerly, 21 CFR 102.13 through 102.17, recodified as §§ 102.39, 102.41, 102.45, 102.49, and 102.55), published in the Federal Register of November 24, 1975 (40 FR 54536-54543).

76. One comment objected to the type size requirement in proposed § 102.22(h)(3) (now § 102.76(k)(2)) on the ground that it is excessive.

The Commissioner advises that the type size requirement is consistent with the general requirement for a statement of the presence or absence of any characterizing component(s) when the presence or absence of such component(s) in the food has a material bearing on price or consumer acceptance or when consumers may otherwise be misled about the presence or absence of the component(s), as described in 21 CFR 102.5(c). He does not consider such type size excessive.

77. A trade association requested that the effective date of the regulation be at least a year after the date of publication since the regulation will require substantial changes in the labeling and formulation of many foods containing vegetable protein products.

The Commissioner has considered the labeling and formulation changes necessary for compliance with the regulation and concludes that an effective date of July 1, 1979 will provide reasonable time for accomplishment of those changes without undue hardship to the parties involved.

The Commissioner also received after the close of the comment period several letters requesting that he repropose the entire regulation because of developments since the proposal. The Commissioner is not aware of any significant recent changes since the close of the comment period which materially affect the appropriateness of issuing this regulation. Furthermore, for the reasons indicated earlier, it would not be in the public interest to delay further the establishment of regulations on this important matter. The Commissioner is aware of the difficulty of the effort to establish names for foods containing vegetable protein products as protein sources at a time when the full utility of vegetable protein products is still emerging. He believes, however, that there has already been enough experience with these products and enough information gathered in this rulemaking proceeding to provide a reasonable basis for going forward with a regulation. In the Commissioner's judgment, the regulation takes a reasonable approach to this field, and provides a basis upon which to build, as experience and further developments indicate the need. The Commissioner will, of course, consider petitions to revise the regulations at any time and will periodically reexamine the regulations on his own initiative as well. Some letters requested that the Commissioner make a draft of the revised regulation available to the public for comment. The Commissioner is giving interested persons the opportunity to comment on the revisions and new developments since the proposal by issuing the regulation as a tentative final regulation. This will provide all members of the public an opportunity to note technical problems or other difficulties that might result from the revisions or new developments.

Background supporting information relating to the revisions and to the responses to the comments is on file with the hearing clerk, Food and Drug

Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, and may be seen between 9 a.m. and 4 p.m., Monday through Friday.

The Commissioner has carefully considered the environmental effects of the proposed regulation and, because the proposed action will not significantly affect the quality of the human environment, has concluded that an environmental impact statement is not required. A copy of the environmental impact assessment is on file with the hearing clerk, Food and Drug Administration.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 403, 701, 52 Stat. 1041 as amended, 1047-1048 as amended, 1055-1056 as amended (21 U.S.C. 321(n), 343, 371)) and under authority delegated to the Commissioner (21 CFR 5.1): *It is ordered*, That Part 102 be amended by adding new §§ 102.75 and 102.76 to read as follows:

§ 102.75 Vegetable protein products.

(a) This section applies to vegetable (plant) products which are processed so that some portion of the nonprotein constituents of the vegetable is removed. These vegetable protein products are safe and suitable edible products produced from vegetable (plant) sources including, but not limited to, soybeans, peanuts, wheat, and corn.

(b) The common or usual names for the vegetable protein products described in paragraph (a) of this section shall include the following:

(1) When the product contains less than 65 percent protein by weight calculated on a moisture-free basis excluding added flavors, colors, or other added substances, the name shall include the name of the source of the protein and the term "flour." Alternatively, the name may include a term which accurately describes the physical form of the product instead of or in addition to the term "flour," e.g., "soy granules" or "soy flour granules." The word "protein" shall not be included in this name.

(2) Except as provided in paragraph (d) of this section, when the product contains 65 percent or more but less than 90 percent protein by weight calculated on a moisture-free basis excluding added flavors, colors, or other added substances, the name shall include "———— protein concentrate," the blank to be filled with the name of the source of the protein, e.g., "soy" or "peanut." The name may include a term that describes the physical form of the product, e.g., "bits" or "granules."

(3) When the product contains 90 percent or more protein by weight calculated on a moisture-free basis excluding added flavors, colors, or other added substances, the name shall include "———— protein isolate" or "isolated ———— protein," the blank to be filled in with the name of the source of the protein, e.g., "soy" or "peanut." The name may include a term that describes the physical form of the product, e.g., "bits" or "granules."

(c) Compliance with the moisture and protein provisions of this section shall be determined by the appropriate methods described in "Official Methods of Analysis of the Association of Official Analytical Chemists."

(d) The vegetable protein products commonly known as "gluten," which contain 65 percent or more but less than 90 percent protein by weight as described in paragraph (b)(2) of this section, shall not bear the name "———— protein concentrate" required by paragraph (b)(2) of this section. The name of these products shall be "———— gluten," the blank to be filled with the name(s) of the source(s) of the gluten.

(e) The common or usual name of a product to which this section applies may include the term "textured" or "texturized" when such term is appropriate.

§ 102.76 Substitutes for meat, seafood, poultry, eggs, or cheeses which contain vegetable protein products as protein sources.

(a) This section applies to any food which meets the following conditions unless other Federal requirements provide for the use of another name:

(1) It substitutes in whole or in part for a major protein food, i.e., its presence in another food results in the presence of a smaller amount of meat, seafood, poultry, eggs, or cheese than is customarily expected or than appears to be present in that food.

(2) It contains one or more of the vegetable protein products for which common or usual names are established in § 102.75 as a source of protein, and those amounts of water, fat or oil, colors, flavors, and any other added substances necessary to make the resultant mixtures resemble the meat, seafood, poultry, eggs, or cheeses for which they substitute. These added substances may be part of the food at the time of sale or may be added by the purchaser.

(b) The common or usual names for a substitute for meat, seafood, poultry, eggs, or cheese shall include the term "vegetable protein product" and may include the term "textured" or "texturized" and/or a term which accurately describes the physical form of the product, e.g., "granules," when such term is appropriate. The term "plant" may be used in the name in lieu of the term "vegetable."

(c) When a product described in paragraph (a) of this section bears in its label, labeling, or advertising any representation of flavor, the common or usual name shall be accompanied by an appropriate flavor declaration as required by § 101.22 of this chapter, e.g., "artificially ham flavored vegetable protein product."

(d) Unless other Federal requirements provide for the use of another name, when a substitute food described in paragraph (a) of this section contains an animal product(s) added for protein content, for functional purposes or for any other purpose (e.g., milk protein, fish protein concentrate, animal fat), the name of the substitute food shall be accompanied by a statement such as "containing ————" or "contains ————," the blank to be filled in with the name(s) of the added animal product(s). Such statement shall be in type no less than one half of the size of the type in the name of the substitute food.

(e) When a food contains one or more vegetable protein product ingredients, each such ingredient shall be listed by source (e.g., soy or peanut) and product type (i.e., flour, concentrate, isolate) in the ingredient statement as required by § 101.4 of this chapter. For example, in a blend of soy protein concentrate, peanut protein isolate, and soy flour, which is permitted by paragraph (b) of this section to bear the name "vegetable protein product," each of the three vegetable protein ingredients of the blend shall be identified as such in the ingredient statement.

(f) A food which resembles and is used for use as a substitute for meat, seafood, poultry, eggs, or cheese as described in paragraph (a) of this section, but which is nutritionally inferior to that animal protein food which it resembles and for which it substitutes, shall be labeled as an imitation of the animal protein food which it resembles and for which it substitutes, pursuant to § 101.3(e) of this chapter. For purposes of § 101.3(e) of this chapter, a substitute food shall be considered nutritionally equivalent to the major protein food for which it substitutes if it meets the following conditions:

(1) (i) When the substitute food is represented for use in such a way that it resembles and substitutes for breakfast meats (e.g., bacon or sausage) or lunch meats (e.g., frankfurters, bologna, or luncheon meat), whether or not such use involves mixing with the food for which it substitutes:

(*a*) The substitute food contains at least 13 percent protein by weight when formulated to resemble the breakfast or lunch meat, and

(*b*) The substitute food contains the following levels of nutrients per gram of protein:

Nutrient	Amount
Vitamin A (IU)	13
Thiamine (milligrams)	0.02

Nutrient	Amount
Riboflavin (milligrams)	.01
Niacin (milligrams)	.3
Pantothenic acid (milligrams)	.04
Vitamin B_6 (milligrams)	.02
Vitamin B_{12} (micrograms)	.1
Iron milligrams)	.15
Magnesium (milligrams)	1.15
Zinc (milligrams)	.5
Copper (micrograms)	24
Potassium (milligrams)	17

(ii) When the substitute food is represented for use in such a way that it resembles and substitutes for seafood, poultry, or meats other than those described in paragraph (f)(1)(i) of this section, whether or not such use involves mixing with the food for which it substitutes:

(*a*) The substitute food contains at least 18 percent protein by weight when formulated to resemble the meat, seafood, or poultry, and

(*b*) The substitute food contains the following levels of nutrients per gram of protein:

Nutrient	Amount
Vitamin A (IU)	13
Thiamine (milligrams)	0.02
Riboflavin (milligrams)	.01
Niacin (milligrams)	.3
Pantothenic acid (milligrams)	.04
Vitamin B_6 (milligrams)	.02
Vitamin B_{12} (micrograms)	.1
Iron (milligrams)	.15
Magnesium (milligrams)	1.15
Zinc (milligrams)	.5
Copper (micrograms)	24
Potassium (milligrams)	17

(iii) When the substitute food is represented for use in such a way that it resembles and substitutes for a combination of one or more of the foods described in paragraph (f)(1)(i) of this section together with one or more of the foods described in paragraph (f)(1)(ii) of this section, it contains the levels of protein, vitamins, and minerals listed for meat, seafood, and poultry in paragraph (f)(1)(ii) of this section.

(iv) When the substitute food is represented for use in such a way that it resembles and substitutes for eggs, whether or not such use involves mixing with eggs:

(*a*) The substitute food contains at least 13 percent protein by weight when formulated to resemble eggs, and

(*b*) The substitute food contains the following levels of nutrients per gram of protein:

Nutrient	Amount
Vitamin A (IU)	91
Thiamine (milligrams)	0.01
Riboflavin (milligrams)	.04
Pantothenic acid (milligrams)	.22
Vitamin B_6 (milligrams)	.02
Vitamin B_{12} (micrograms)	.15
Iron (milligrams)	.19
Zinc (milligrams)	.22
Calcium (milligrams)	4.3
Copper (micrograms)	14
Potassium (milligrams)	10
Vitamin E (IU)	.15
Biotin (micrograms)	1.7

(v) When the substitute food is represented for use in such a way that it resembles and substitutes for cream cheese (neufchatel and cream cheese), whether or not such use involves mixing with cream cheese:

(*a*) The substitute food contains at least 9 percent protein by weight when formulated to resemble cream cheese, and

(*b*) The substitute food contains the following levels of nutrients per gram of protein:

Nutrient	Amount
Vitamin A (IU)	146
Riboflavin (milligrams)	0.02
Calcim (milligrams)	9

(vi) When the substitute food is represented for use in such a way that it resembles and substitutes for cottage cheeses, whether or not such use involves mixing with cottage cheese:

(*a*) The substitute food contains at least 14 percent protein by weight when formulated to resemble cottage cheese, and

(*b*) The substitute food contains the following levels of nutrients per gram of protein:

Nutrient	Amount
Riboflavin (milligrams)	0.01
Pantothenic acid (milligrams)	0.02
Vitamin B_6	0.01
Vitamin B_{12} (micrograms)	0.05
Calcium (milligrams)	4
Zinc (milligrams)	0.06
Folic acid (micrograms)	1
Potassium (milligrams)	6

(vii) When the substitute food is represented for use in such a way that it resembles and substitutes for natural cheeses other than cream cheese and cottage cheeses, whether or not such use involves mixing with natural cheeses:

(*a*) The substitute food contains at least 24 percent protein by weight when formulated to resemble the natural cheese, and

(*b*) The substitute food contains the following levels of nutrients per gram of protein:

Nutrient	Amount
Vitamin A (IU)	39
Riboflavin (milligrams)	0.02
Vitamin B_{12} (micrograms)	.05
Calcium (milligrams)	28
Phosphorus (milligrams)	19
Zinc (milligrams)	.24

(2)(i) If the formulated substitute food is represented for use in an amount no greater than 30 percent by weight of the mixture when mixed with meat, seafood, poultry, eggs, or cheeses, the biological quality of the protein in the substitute food is at least 80 percent that of casein.

(ii) If the formulated substitute food is represented for use in an amount more than 30 percent by weight of the mixture when mixed with meat, seafood, poultry, eggs, or cheese, the biological quality of the protein (including amino acids added thereto) in the substitute food is at least 100 percent that of casein.

(3) For the purposes of this section, "when formulated" refers to a dry vegetable protein product(s) and the amount(s) of water, fat or oil, colors, flavors, and any other substances which have been added in order to make the resulting mixture resemble the food for which it substitutes.

(g) Compliance with the nutrient provisions of this section shall be determined in the manner set forth in § 101.9 of this chapter.

(h) When a food containing a vegetable protein product(s) substitutes for meat, seafood, poultry, eggs, or a cheese, the sodium content of the food shall be declared on the label in accordance with §§ 101.9 and 105.69 of this chapter, except that the number of milligrams in 100 grams of food need not be stated. This declaration of sodium content shall be a part of the nutrition labeling of the substitute food and of any other food in which the substitute food is an ingredient.

(i) When a food containing a vegetable protein product(s) substitutes for meat, seafood, poultry, eggs, or a cheese, the number of milligrams of potassium per serving of the food shall be declared on the label immediately following the declaration of sodium content required by paragraph (h) of this section. This declaration of potassium content shall be a part of the nutrition labeling of the substitute food and of any other food in which the substitute food is an ingredient.

(j) When a substitute food described in paragraph (a) of this section is used as an ingredient in another food, the name of the substitute food shall appear in the name of the finished food as follows:

(1) The name of a finished food that as a whole resembles meat, seafood, poultry, eggs, or a cheese when prepared for consumption and that contains both that meat, seafood, poultry, eggs, or cheese and a food which contains a vegetable protein product and substitutes in part for that meat, seafood, poultry, eggs, or cheese, shall include the names of both such constituents in descending order of predominance and in the same type size.

(2) The name of a multicomponent finished food that contains a charac-

terizing component which consists in whole or in part of a substitute for meat, seafood, poultry, eggs, or cheeses which contains vegetable protein products shall be accompanied by a statement such as "contains ————" or "made with ————," the blank to be filled with the name of the component containing the substitute food. The statement shall be in type size not less than one half the size of the type in the name of the finished food. For example, for an article resembling "fish chowder" in which the fish component is wholly replaced by a vegetable protein product, the name might be "chowder, made with artificially fish-flavored vegetable protein product"; and for an article resembling "macaroni and cheese" in which a vegetable protein product substitutes for part of the cheese, the name might be "macaroni casserole, made with cheese and vegetable protein product".

Interested persons may, on or before September 12, 1978, submit to the hearing clerk, Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written comments (preferably four copies and identified with the hearing clerk docket number found in brackets in the heading of this document) regarding the revisions made to the proposal and issued as part of this tentative final regulation and new developments since the proposal that warrants consideration. Received comments may be seen in the above-mentioned office from 9 a.m. to 4 p.m., Monday through Friday.

Dated: July 5, 1978.

DONALD KENNEDY,
Commissioner of Foods and Drugs.

[FR Doc. 78-19233 Filed 7-13-78; 8:45 am]

federal register

FRIDAY, JULY 14, 1978
PART IV



INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

United States Section

■

IMPLEMENTATION OF EXECUTIVE ORDERS 11988 (FLOODPLAIN MANAGEMENT) AND 11990 (PROTECTION OF WETLANDS)

[4710-07]

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

United States Section

IMPLEMENTATION OF EXECUTIVE ORDERS 11988 (FLOODPLAIN MANAGEMENT) AND 11990 (PROTECTION OF WETLANDS)

AGENCY: United States Section, International Boundary and Water Commission.

ACTION: Proposed procedures.

SUMMARY: The proposed procedures proscribes policies utilized or to be utilized by the United States Section in implementing Executive Orders 11988 (Floodplain Management) and 11990 (Protection of Wetlands) as they pertain to the planning, design and construction of treaty projects along the United States and Mexican international boundary and to the United States Section's operation and maintenance activities.

DATE: Comments must be received by September 13, 1978.

FOR FURTHER INFORMATION, CONTACT:

Mr. Frank P. Fullerton, Legal Adviser, International Boundary and Water Commission, United States and Mexico, 200 IBWC Building, 4110 Rio Bravo, El Paso, Tex. 79902, FTS: 572-7393.

PROCEDURES OF THE UNITED STATES SECTION, INTERNATIONAL BOUNDARY AND WATER COMMISSION, TO IMPLEMENT THE OBJECTIVES OF EXECUTIVE ORDERS 11988 (FLOODPLAIN MANAGEMENT) AND 11990 (PROTECTION OF WETLANDS)

The United States Section has adopted or reaffirms the following described procedures to assure mangeable operations of its projects, responsive to the objectives and needs of Executive Orders 11988 and 11990, to prevent the unwise development of the floodplains along the limitrophe section of the Rio Grande and the Colorado River and to prohibit the destruction or modification of wetlands and to prevent new construction in the wetlands within the United States and under the jurisdiction of the United States Section without affecting or impairing the provisions of any treaty of the United States.

The procedures have been developed by the United States Commissioner. They have been drawn from the "Guidelines for Implementing Executive Order 11988" issued by the Water Resources Council on February 10, 1978.

PURPOSE AND APPLICABILITY

(1) *Purpose.* The specific purposes of these procedures are to (a) evaluate proposed construction in the floodplains and the wetlands in the limitrophe section of the Rio Grande and the Colorado River and in the evaluation process to give notice and the opportunity for public meetings and hearings for such construction, to assure input of public concerns as well as the consideration of the provisions of any treaty and agreement of the United States and Mexico, (b) conspicuous delineation on structures and other places where appropriate of past and probable flood height, and (c) provide appropriate restrictions in conveyances and uses of Federal property.

(2) *Applicability.* These procedures are applicable to all activities involving the construction or development in the floodplains or the modification or destruction of wetlands involving proposed or existing projects and programs, under the jurisdiction of the United States Section to carry out the United States obligations as defined in the boundary and water treaties with Mexico. They will be applied by the engineers and ecological specialists of the United States Section in their review.

DEFINITIONS

For the purpose of these guidelines, the following terms shall have the meaning indicated:

(1) "The Commissioner"—the term "Commissioner" means the United States Commissioner, United States Section, International Boundary and Water Commission, United States and Mexico.

(2) "United States Section"—the term "United States Section" means the United States Section, International Boundary and Water Commission, United States and Mexico.

(3) "Executive Orders"—the term "Executive Orders" means Executive Orders 11988 and 11990.

(4) "Limitrophe parts of the Rio Grande and Colorado River"—the term limitrophe parts means those reaches of the rivers that form the international boundary between the United States and Mexico.

(5) "Wetlands"—the term "wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

ACTIVITIES REQUIRING COMPLIANCE WITH THE PROCEDURES

(1) *Improvement and maintenance of river channels.* In the improvement of river channels and in carring out its operation and maintenance activities, the United States Section excavates material from the channel of certain reaches of the boundary rivers by use of wheel and tract driven equipment to preserve the river channels, conserve water, and to maintain effective control of floods, all to comply with the treaties and other agreements between the United States and Mexico and acts of the Congress. The material removed from the river is deposited by the Section in the following locations: within the project floodplain, land side of project levees, and on other lands—private and government-owned, beyond the project subject to the approval of the owners or those having jurisdiction. Further, the removed material in some cases is made available to the private sector for utilization away from the project and the Section may authorize such removal by the private sector in accordance with its requirements.

(2) *Bank stabilization, boundary preservation, and flood control.* In carrying out its operational and maintenance activities where necessary to stabilize United States banks of the boundary rivers to preserve the international boundary between the United States and Mexico and to maintain its effective flood control capacity, the Section may need to grade the banks, and to add riprap or other types of bank protection.

(3) *Clearing vegetation.* To maintain the river channel to preserve the international boundary and its water carrying capacity, the clearing operations of the United States Section, at times and in some areas, require the grading of the banks of the rivers.

(4) *Construction and maintenance of structures.* The United States Section constructs, operates, and maintains structures along river boundaries and near the mouths of tributaries, including dams, grade control structures, levees, and gaging station and appurtenant works for measuring waters to determine the national ownership of waters in accordance with treaties with Mexico. Their construction, at times and in some places, requires construction of temporary cofferdams. Maintenance of these structures is performed as necessary, and may include the addition of material in the channel or on lands adjacent to the channel. The United States Section levees usually are located well outside the ordinary high water mark which is defined by the mean daily flows as that area inundated 25 percent of the time.

PROCEDURE FOR COMPLIANCE

(1) For activity requiring compliance with the Executive Orders, the United States Section staff will prepare a preliminary report on the proposed action to include an environmental assessment and submit it to the Commissioner along with an evaluation of

need for work to be undertaken, including all pertinent data, information, and drawings that adequately describe the proposed work.

(2) In preparing the environmental assessment, the United States Section staff will:

(a) Utilize all available Environmental Impact Statements (EIS) which have previously been prepared in accordance with Section 102 of the National Environmental Policy Act of 1969.

(b) Make an independent evaluation of the environmental factors for those work areas for which an EIS has not previously been prepared.

(c) During the process of making the environmental assessment (the assessment is the preliminary procedure of assembling data to determine whether a negative declaration will be adequate or whether an environmental impact statement will be required), letters will be sent to interested groups and individuals, and notice put in local newspapers advising briefly as to the proposed project and make available any plans or proposals.

(d) Make recommendations to the Commissioner as to whether an EIS or a negative declaration is needed.

(e) Make interim recommendations to the Commissioner as to whether a public hearing should be held.

(3) Upon review of the environmental assessment the Commissioner will evaluate the assessment and determine whether an impact statement or negative declaration will be required.

(4) Where determined needed by the Commissioner, a public hearing or meeting will be scheduled.

(5) If it is determined that a negative declaration is to be prepared, a notice will be published in the FEDERAL REGISTER and local newpapers of "an intent to make a negative declaration."

(6) In those cases requiring an EIS, the statement will be prepared in accordance with the Section's "Operational Procedures for Implementing Section 102 of the National Environmental Policy Act of 1969."

(7) Public notice will be given of all proposed actions to comply with the objectives and needs of existing laws in those circumstances wherein an EIS will be necessary. The public notices should include the following items of information:

(a) Applicable statutory authority or authorities;

(b) The location of the proposed activity;

(c) A brief description of the proposed activity, its purpose and intended use, including a description of the type of structures, if any, to be erected;

(d) A drawing showing the general and specific site location and character of all proposed activities, including the size relationship of the proposed structures to the size of the impacted area;

(e) A list of other Government authorizations obtained or requested including required certifications relative to water quality, coastal zone management, or marine sanctuaries;

(f) A statement concerning a preliminary determination of the need for and/or availability of an Environmental Impact Statement;

(g) Any other available information which may assist interested parties in evaluating the likely impact of the proposed activity, if any, on factors affecting the public interest, including the environmental values;

(h) A statement that any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider the proposed activity. Requests for public hearings shall state, with particularity, the reason for holding a public hearing;

(i) A reasonable period of time, normally 60 days but not less than 15 days from date of mailing, within which interested parties may express their views concerning the proposed activity; and

(j) A paragraph describing the factor on which a decision will be based.

The decision whether to proceed with an activity will be based on an evaluation of the probable impact of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources and the United States' obligations and commitments by virtue of the treaties between the United States and Mexico. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered; among those are conservation, economics, aesthetics, general environmental concerns, historic values, fish and wildlife values, flood damage prevention, preservation and protection of the wetlands, land use classification, recreation, water supply, water quality, and in general the needs and welfare of the people. It is emphasized that if a proposed activity is to be performed in the floodplain or in valuable wetlands, the Commissioner will evaluate it to determine whether there is an alteration which will accomplish the mission of the section without the construction of works in the floodplains or wetlands. The unnecessary alteration or destruction of wetlands will be discouraged as being contrary to the public interest.

A decision to proceed with, or delay, an activity will not be made until public notice has been published in the FEDERAL REGISTER and independently given to Federal and State agencies, environmental organizations and other interested persons, and comments have been received and studied. At least sixty (60) days will be permitted for comments.

(8) When an EIS is not prepared, the Environmental Assessment will be prepared in such a manner that a reviewable record with an accompanying appraisal is available. The United States section will prepare the Environmental Assessment in the form of a "mini" environmental impact statement after consultation with the public, appropriate agencies and authorities. Further, to support a recommendation that an EIS is not needed, the Environmental Assessment will include a finding that the proposed action is not a major Federal action significantly affecting the quality of the human environment.

(9) After all the above actions have been completed, the Commissioner will make a written determination in accordance with the record, whether to proceed with, or to modify an activity, and will state in detail any such modifications. The Commissioner shall prepare a findings of fact in regard to all of his determinations. The Findings shall include the Commissioner's views on the probable effect of the proposed work on the public interest. The Findings shall be dated and signed and included in the record prior to final action by the Commissioner or the United States section.

Dated: July 6, 1978.

FRANK P. FULLERTON,
Legal Adviser.

[FR Doc. 78-19403 Filed 7-13-78; 8:45 am]

federal register

FRIDAY, JULY 14, 1978
PART V



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

■

OBLIGATIONS OF PUBLIC HOUSING AGENCIES

Tax Exemption and Related Amendment

[4210-01]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[24 CFR Parts 221, 811, 880 and 881]

[Docket No. R-78-558]

OBLIGATIONS OF PUBLIC HOUSING AGENCIES

Tax Exemption and Related Amendments

AGENCY: Department of Housing and Urban Development.

ACTION: Proposed rule.

SUMMARY: The rule with respect to tax exemption of obligations of public housing agencies (PHA's) issued to finance section 8 projects is being changed to clarify and strengthen various requirements, for example: An operating escrow for the initial operating period; HAP contract and term of obligations to be coterminus for noninsured projects and HAP contract term to be limited to 20 years for insured projects; provisions of debt service reserve for both FHA-insured and non-FHA-insured projects; ceiling on permissible interest rates; limit of return on equity to profit-motivated owners; ceiling on cost of issuance and ancillary cost of servicing; short-form cost certification; and architectural inspection during construction. The changes are intended to benefit the program generally based on a year's experience since the rule was adopted.

DATE: Comments due August 16, 1978.

ADDRESS: Comments should be filed with the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-7603.

FOR FURTHER INFORMATION CONTACT:

Neil Churchill, Housing Program Specialist, Department of Housing and Urban Development, Washington, D.C. 20031, 202-755-5830.

SUPPLEMENTARY INFORMATION: The Department published a final rule on August 3, 1977 (42 FR 39205) that revised this subpart. The process of drafting the implementing handbook instructions that established additional amendments were necessary because many of the necessary guidelines and standards are of such importance as to require publication as proposed regulations with opportunity for public comment.

This publication is for comment only and its provisions are not to be used for effect or for guidance until the regulations, rewritten as a result of public comment, are revised and published in the FEDERAL REGISTER. Necessary processing instructions, forms and amendments to the contracts, will be provided in a handbook at the same time. The regulations when published for effect will state that they are effective with respect to projects for which the preliminary proposal is submitted on or after the effective date of the regulations; however, after such publication and upon the owner's request, the field office may process proposals that were submitted prior to the effective date in accordance with the amended regulations, provided that all provisions of the amended regulations and related instructions are complied with.

Although the proposed regulations exclude commercial space and non-section 8 units from projects financed with tax-exempt obligations, the Department is exploring the possibility of permitting their inclusion in such projects. Comments from the public will be useful in examining these issues and are invited.

A discussion of the major proposed changes is set forth below.

1. Changes in definition (§ 811.102). Changes in the definition of agency or instrumentality PHA and parent entity PHA reflect the modification to section 811.105 discussed below (item 5). The definition of low-income housing specifies that all dwelling units, except as needed for a project manager or similar requirement, must be section 8 contract units; this is a clarification of what was previously required. The definition of expenses of issuing requires that any discount or premium resulting from the initial issuance is to be considered as part of the payment of the expenses of issuing; however, where an underwriting house purchases obligations for its own account without a binding offer or firm commitment for subsequent placement, the subsequent placement shall be at the underwriter's risk and any profit or loss is not regulated by HUD. The term syndicated owner has been added to differentiate profit-motivated owners (general partners) who sell the preponderant portion of the ownership interest in the project from those owners retaining at least 25-percent ownership. The regulations provides a higher amount of required operating escrow for syndicated owner projects and a lower rate of return on equity. An owner who has sold 75 percent of the ownership has a greater amount of available case proceeds for such an escrow than a nonsyndicated owner. The Department wishes the syndicated owner to evidence a continued strong interest in and attention to the project, especially in the early years of project operation, and believes the escrow requirement will encourage such an interest. A lower rate of return for the syndicated owner is justified by the fact that the syndicated owner receives a substantial return from the project initially, which is regarded by HUD as a sufficient incentive to promote development.

2. To assure the continuing responsibilities of a governmental entity or public body PHA for administration of the contract for projects financed with tax-exempt obligations, § 811.103(b) requires that such a PHA administer the contract pursuant to an ACC with HUD or directly own the project. An exception is permitted if "other arrangements for administration" are established that are acceptable to HUD.

3. Sections 811.104(a)(1)(ii) and 811.105(a)(2)(iv) have been amended to add "administrative capability, including any previous experience in multifamily housing programs" to indicate that HUD will require evidence that the PHA has the capability to carry out its responsibilities with respect to the project.

4. Sections 811.104(b) and 811.105(b)(1) limit compensation to a PHA from the financing to its expenses, since these are not-for-profit entities.

5. Section 811.105, as it appears in the August 3, 1977 regulations, has been rewritten because the use of the words "created," "designated" or "utilized" was confusing and the general words "duly authorized" conflicted with the explicit requirements. The provision now distinguishes between the actions taken pursuant to State law (the creation of the not-for-profit agency or instrumentality) and the actions that must not be prohibited under State law (those required to establish the relationship between the agency or instrumentality and the parent entity PHA pursuant to § 811.105(c)). Following review to determine that satisfactory evidence has been submitted on these points, HUD will determine that the relationship is such that the agency or instrumentality is an agency or instrumentality PHA for the purpose of the U.S. Housing Act of 1937.

6. Section 811.105(c)(2) permits members, officers or employees of the parent entity PHA to hold policy-making offices with the agency or instrumentality PHA unless this is contrary to State law.

7. Section 811.106(b)(1) has been revised to permit a 40-year contract for projects with a majority of the units designed for non-elderly use. The owner is required to provide section 8 low-income housing so long as the obligations are outstanding; the contract for projects financed with part 811 obligations will be for a stated term as contrasted with the 5-year term with options to renew in the regular section 8 program. For FHA-insured projects, the term of the contract shall be limited to 20 years notwithstanding the longer term of the mortgage and/or the obligations. HUD will have a con-

tinuing responsibility with respect to these FHA-insured projects and may choose to renew the contract or to provide some other form of subsidy if HUD determines a continuation of subsidy assistance is in the best interest of the project and the assistance is legally and administratively available at the time.

8. Section 811.107 incorporates sections 880.125 and 881.125, rewritten appropriately, to clarify what financing data and documents, certifications and explanatory material are to be submitted by the financing agency. Section 811.107(a)(2) requires that the official statement or prospectus include a statement concerning the ACC, agreement and contrat as security for the obligations and a specific disclaimer of any other HUD liability in connection with the obligations. Section 811.107(a)(5) requires an opinion from a bond counsel who is qualified and experienced in governmental or public body bond issues of comparable size and complexity with regard to the legality of all aspects of the financing or a similar opinion from lender's counsel in the case of straight mortgage transactions. We invite comment as to the appropriate methods for determining the acceptability of counsel.

9. Section 811.108 (previously 811.106) has been substantially rewritten.

a. *For FHA-insured projects.* (1) The expenses of issuing may not exceed stated maximum limits which are the same for both FHA-insured and non-FHA-insured projects. Within these maximums, the field office is to determine that individual items of expense are necessary and reasonable. Appropriate processing instructions for FHA-insured projects will be included in the handbook or in admendments to existing FHA processing instructions. (2) A debt service reserve not to exceed the debt service amount payable on the obligations for 6 months may be included in the obligations, but may not be included in the FHA-insured mortgage (see item 9c below). A 6-months debt service reserve is considered sufficient security for FHA-insured projects.

(3) For profit-motivated owners, the equity investment will be determined by the usual FHA requirements. An escrow in the form of cash or a letter of credit is to be established to meet any potential operating deficit during the first 4 years of project operation. The escrow will be 4 percent of development cost for syndicated owners and 2 percent for other profit-motivated owners. An allowance to make the project operational of 2 percent of development cost shall be included in the mortgage for not-for-profit owners.

b. *For non-FHA insured projects.* (1) A method of determining the maximum amount of obligations has been provided that does not rely on the detailed determinations required by FHA processing and which should permit accelerated processing of these non-FHA-insured projects. This method (section 811.108(b)) is based on capitalization of net project income (based on approved contract rents).

(2) In computing net project income, whether for FHA-insured or for non-FHA-insured projects, the allowance for vacancies is to be not less than 2 percent rather than the usual 5 percent in order to take into account the fact that 80 percent of the rent is paid for by the section 8 subsidy during the first 60 days of any vacancy. The loss during this period is only 20 percent of the rent for the vacancy period, for which a 1-percent vacancy allowance would be sufficient. An additional allowance of the same amount is made for collection losses, so that the total allowance is equal to 40 percent of the rent or a 2-percent vacancy allowance. On this basis, a 2-percent allowance in a section 8 project is equivalent to a 5-percent allowance in other projects. If by reason of special adverse marketing considerations a larger vacancy allowance than 5 percent (in the absence of section 8 subsidy) would be appropriate, the allowance could be adjusted to bear the same proportionate relationship as 2 percent to 5 percent. The handbook will provide explicit instructions in this regard.

(3) A profit-motivated owner is required to have an equity investment equal to 10 percent of the development cost and to provide an escrow to the same extent as for FHA-insured projects to meet any initial operating deficit. Two percent would be included in development cost for not-for-profit owners to fund the residual reserve.

c. *Debt service reserve.* A debt service reserve, whether for an FHA-insured or a non-FHA-insured project, may be included in the obligations.

(1) In the case of an FHA-insured project, the investment income from the amount of the debt service reserve will be used to pay interest costs on the obligations attributed to the debt service reserve. In the unlikely event that the investment income is insufficient for this purpose, project income may be used and the trust indenture may require that this be done. Payment of the principal attributable to the debt service reserve will be made at the end of the term of the obligations.

(2) In the case of a non-FHA-insured project, the owner's debt service payment will be based upon the full amount of the obligations (i.e., inclusive of the amount for the debt service reserve) but investment income from the debt service reserve, up to the amount required, will be credited toward the owner's debt service payment. Any excess investment income will become part of the debt service reserve. Payment of the principal attributable to the debt service reserve may be made over the years or at the end of the term of the obligations.

10. Section 811.109 sets the maximum limit on the interest rate of the obligations at the rate for an FHA-insured mortgage using the tandem plan (GNMA program 25, currently 7½ percent). Within this limit, the rate is to be set by competitive bidding or, in the alternative, the rate is not to exceed specific limits related to the 20 Bond Index published by the Daily Bond Buyer. The field office may, however, approve an interest rate up to the tandem plan rate if it is demonstrated that a reduced principal amount of the obligations compensates for such higher interest rate. The ancillary cost of servicing is limited to three-tenths of 1 percent of the obligations.

11. The initial clause in § 811.110(c) has been added to preclude requests for tax exemption of interim obligations only. There is insufficient benefit to the Federal Government to justify granting such a request. The interest rate on tax-exempt interim financing is limited to 90 percent of the Treasury 6-month bill rate.

12. For non-FHA-insured projects, § 811.111(b)(1) provides that HUD will review the plans and specifications in accordance with standards applicable to FHA-insured projects, and § 811.111(b)(3) provides for HUD inspections during construction by an architect hired by the financing agency and approved by HUD.

13. Section 811.112(b) requires the financing agency to certify to HUD, after issuance of the obligations, the interest rate on the obligations, the debt service amount to be paid by the owner and the other terms of the financing. To the extent the debt service amount to be paid by the owner is lower than the amount used in processing, the contract shall be amended to reduce the initial contract rents. This procedure will permit initial processing at a projected rate with a subsequent reduction to assure that the savings obtained by tax exemption are reflected in reduced contract rents. The maximum ACC and contract commitment are not reduced and the equivalent of the savings will be credited to the project account.

14. Section 811.112(c) has been revised to state that the required guarantee of a local government, for purposes of exemption from the escrow requirement, relates to redemption of the obligations if a contract is not executed, rather than to continued payment of principal and interest. The expenses of issuing the obligations may be paid from the escrow prior to execution of the contract. We are advised this is consistent with customary practice in the bond market.

15. Section 811.113(d) requires submission of cost certification and financial data upon completion of non-FHA-insured projects to support the initial HUD determination of the amount of the obligations. This may be scheduled in such a manner that the contract is executed before final completion of cost certification, provided that the lien of any interim lender is released. The data are subject to post-audit; appropriate action against any party submitting incorrect or false statements may be taken. Contract rents are not subject to reduction. Any funds remaining in the escrow are to be placed in the residual reserve.

16. Section 811.114 inposes no additional controls on the use of project revenues for FHA-insured projects other than those already required under applicable FHA requirements. A gross revenue pledge is not permitted; however, the pledge of the contract may provide that all payments thereunder shall be made directly to the mortgagee who shall make all payments and deposits required under the mortgage and who shall remit the excess to the owner.

17. Section 811.115 states specific provisions that must be included in the trust indenture for non-FHA-insured projects. The trust indenture, and other documents involved in the financing, will be reviewed by HUD and must be consistent with all applicable section 8 regulations.

(a) Project funds, in excess of payments under the trust indenture, for operating expenses and for required deposits, including maintenance and replacement reserves, are to be placed in a residual reserve. Funds in the residual reserve are available with the prior written approval of the trust for any project purpose, including permitted return to the owner but excluding payments into the debt service reserve.

(b) The return to profit-motivated owners is to be limited by the trust indenture to a specified percentage of equity investment: 6-percent rate of return is permitted for syndicated owners; for other profit-motivated owners, 8 percent is permitted for elderly projects and 10 percent for family projects. Return is to be calculated annually and shortfalls in one year may be paid from funds accumulated in the residual reserve in the next 5 years.

(c) Where funds accumulate in the residual reserve beyond a specified level, the excess funds shall be used to reduce housing assistance payments from HUD. Upon expiration of the contract, funds remaining in the residual reserve are to be remitted to HUD. Since the contract commits 100 percent subsidy to the project, remitting the funds in the residual reserve to HUD is considered appropriate. An annual audit of the owner is required.

(d) Upon termination of the contract, all funds in the debt service reserve are to be remitted to HUD.

(e) The trust indenture is to permit additional tax-exmept obligations to be issued for project improvements after the second fiscal year of the contract to finance additional development cost that is shown to be reasonable and is approved pursuant to this subpart, provided that HUD approves an increase in contract rents to amortize the additional obligations. The rights of the original bondholders or lenders will not be diluted by the issuance of additional obligations and the trust indenture should permit such an issuance, since past experience has indicated that there may be a need for capital improvements at a later date.

18. Section 811.116(a) provides that requests for tax exemption for projects with an executed contract or an executed agreement based on a final proposal that did not include part 811 financing require specific authorization from the Assistant Secretary for Housing. Once an agreement or contract is executed the owner is expected to proceed accordingly, except in unusual circumstances.

19. Sections 811.116(b)(4) and 221.762(c) have been added to provide that in the case of projects financed with obligations that are tax exempt under section 11(b) and where the mortgage is insured under section 221 of the National Housing Act, the 1 percent deduction upon assignment to HUD shall not be applicable.

20. Section 811.116(d) provides that obligations may be prepaid only under such conditions, including reduction of contract rents, as HUD shall require. This provision is intended to assure that the project will continue to be used for low-income housing and that prepayment is in the interest of HUD.

21. Section 811.116(e) provides that participating agencies under 24 CFR Part 883 are not permitted to use the special procedures under subpart C of those regulations for projects financed with obligations issued pursuant to this subpart. The acceptance by HUD of certifications issued by such agencies is incompatible with the detailed HUD reviews required under this subpart.

22. Sections 880.201 and 881.201 are to be amended to restrict the use of funds which are set aside for PHA-owner units to projects of PHA's organized under the State housing authorities law (not including an agency or instrumentality of such a PHA unless specifically determined to be eligible). The explanation of the "agency or instrumentality" relationship in the August 3, 1977 regulations and the widespread interest in part 811 financing has encouraged the participation of public entities and the formation of agency or instrumentality PHA's on such a widespread scale that an explicit restriction to PHA's organized under a state housing authorities law is necessary and appropriate to comply with the purpose of the set-aside.

23. 24 CFR 203.3 is also being amended separately to permit any PHA approved as an agency or instrumentality PHA under this subpart to qualify as an FHA-approved mortgagee, if otherwise acceptable, rather than requiring that such entities participate as a lender only through other FHA-approved mortgagees. This will eliminate undesirable and unnecessary duplication of functions and fees.

A finding of inapplicability regarding the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this finding of inapplicability will be available for public inspection during regular business hours at the Office of the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410

Accordingly, it is proposed to amend part 811 as follows:

Subpart A of Part 811 is revised in its entirety including the title of the subpart heading to read as follows:

PART 811—TAX EXEMPTION OF OBLIGATIONS OF PUBLIC HOUSING AGENCIES AND RELATED AMENDMENTS

Subpart A—Tax Exemption, Under Section 11(b) of the Act, of Obligations Issued by Public Housing Agencies to Finance Section 8 Projects.

Sec.

811.101 Purpose and scope.
811.102 Definitions.
811.103 General.
811.104 Approval of public housing agency (other than agency or instrumentality PHA's).
811.105 Approval of agency or instrumentality PHA.
811.106 Term of contract and of permanent obligations.
811.107 Financing documents and data.
811.108 Amount of permanent obligations and debt service reserve.
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811.116 Other requirements.
811.117 Approval of obligations as tax exempt.
811.118 Limited applicability to tax exemption other than under section 11(b).

AUTHORITY: Sec. 7(d) Department of HUD Act (42 U.S.C. 3535(d)); sec. 3(6), 5(b), 8 and 11(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f and 1437i).

Subpart A—Tax Exemption, Under Section 11(b) of the Act, of Obligations Issued by Public Housing Agencies to Finance Section 8 Projects.

§ 811.101 Purpose and scope.

(a) Section 11(b) of the act provides that "obligations, including interest thereon, issued by public housing agencies in connection with low-income housing projects shall be exempt from all taxation now or hereafter imposed by the United States whether paid by such agencies or by the Secretary. The income derived by such agencies from such projects shall be exempt from all taxation now or hereafter imposed by the United States."

(b) The purpose of this subpart is to provide a basis for determining tax exemption of obligations issued by public housing agencies pursuant to section 11(b) of the United States Housing Act of 1937 for section 8 new construction or substantial rehabilitation projects (24 CFR Parts 880, 881 and 883).

(c) This subpart does not apply to tax exemption pursuant to section 11(b) for low-income housing projects developed pursuant to 24 CFR Parts 805 and 841.

§ 811.102 Definitions.

Act. The United States Housing Act of 1937 (42 U.S.C. 1437, et seq.).

Agency or instrumentality PHA. A not-for-profit entity (which as to form may be a corporation, trust, commission, bureau, tribe, district, authority, unincorporated association, partnership, or other form of organization) which is authorized to engage in or assist in the development or operation of low-income housing and that has a relationship to a parent entity PHA as required by this subpart.

Agreement. An agreement to enter into housing assistance payments contract as defined in the applicable section 8 regulations. The form of agreement for projects financed with tax-exempt obligations shall be amended in accordance with this subpart.

Ancillary cost of servicing. The annual ongoing costs of servicing the obligations (including any debt service reserve), including trustee fees, mortgage servicing fees, PHA expenses in connection with annual reviews, maintenance of books and accounts, audit expenses, agent fees, and other ongoing costs of servicing the obligations.

Annual contributions contract (ACC). An annual contributions contract as defined in the applicable section 8 regulations. The form of ACC for projects financed with tax exempt obligations shall be amended in accordance with this subpart.

Applicable section 8 regulations. 24 CFR Parts 880, 881, and 883.

Contract. A housing assistance payments contract as defined in the applicable section 8 regulations. The form of the contract for projects financed with tax-exempt obligations shall be amended in accordance with this subpart.

Development cost. Ordinary, necessary, and reasonable costs for planning, land acquisition, demolition, construction, or rehabilitation, equipment, and other items necessary for the development or acquisition of a low-income housing project, costs of the interim financing, and for not-for-profit owners either an allowance to make the project operational (for FHA-insured projects) or the required funding of the residual reserve (for non-FHA-insured projects).

Expenses of issuing. Ordinary, necessary, and reasonable costs in connection with the issuance of the obligations (including any debt service reserve) consisting of attorney's fees, underwriter's/issuer's fees, rating agency's fees, trustee's initial fee, printing costs, bond counsel's fees, feasibility studies (for non-FHA-insured projects only), consultants' fees, and other fees or expenses approved by HUD. If the obligations are to be issued at a discount or premium, the resulting return, if any, shall be considered as payment toward the total expenses of issuing the obligations and if the amount of such return exceeds the expenses of issuing, the excess shall be placed in the residual reserve or, for FHA-insured projects, the residual receipts account. If the underwriting house at the date of issuance is to purchase the obligations for its own account and has no binding commitment or firm offer for a subsequent placement of the obligations this shall be stated and the underwriter shall be subject to no HUD restrictions in making such subsequent placement, which shall be at the underwriter's risk.

Financing agency. The PHA (parent entity PHA or agency or instrumentality PHA) that issues the obligations for the permanent financing of the project.

HUD. The Department of Housing and Urban Development or its designee.

Low-income housing. Housing for families and persons of lower income pursuant to section 8 of the act, including those within that income range who may otherwise be referred to as moderate-income families and persons. A low-income housing project shall include all necessary appurtances but no commercial space. Except as needed for a resident manager or similar requirement, all dwelling units in the low-income housing project which is to be financed with obligations issued pursuant to this subpart must be section 8 contract units.

Owner. An owner as defined in the applicable section 8 regulations.

Parent entity PHA. Any State, county, municipality, or other governmental entity, or public body which is authorized to engage in or assist in the development or operation of low-income housing and that has a relationship to an agency or instrumentality PHA as required by this subpart.

Public housing agency (PHA). Any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of low-income housing.

Residual reserve. the reserve to be established under the trust indenture for non-FHA-insured projects section 811.115(c).

Syndicated owner. The ownership of a project shall be deemed to constitute a syndicated ownership if the owner is a limited partnership, the general partners of which have less than 25 percent of the ownership interest as set forth in the limited partnership agreement. The owner shall be required to agree that if the owner meets the above definition at the date of execution of the contract or during the first fiscal year after execution of the contract, the owner will contribute the additional amount to the escrow for operating expenses that is required of a syndicated owner.

Trust indenture. A mortgage or deed of trust, or, for the purpose of bond financing, a contract between the issuer, bondholders, and trustee regarding the terms and conditions of the financing which includes provisions regarding the loan to the owner. The obligations to be issued pursuant to the trust indenture to provide financing for low-income housing may be in the form of bonds or notes. Pursuant to section 319(b) of the Housing and Community Development Act of 1974, the term obligation shall not include any obligation secured by a mortgage which is insured under section 221(d)(3) of the National Housing Act and issued by a public agency as mortgagor in connection with the financing of a project assisted under section 8 of the act (this exclusion does not apply to a public agency as mortgagee).

Trustee. A bank or other financial institution which is legally qualified and experienced in performing fiduciary responsibilities with respect to the care and investment of funds of a magnitude comparable to those involved in the financing.

§ 811.103 General.

In order for obligations to be tax exempt under this subpart:

(a) The obligations must be issued in connection with a low-income housing project approved by HUD under the act and the applicable section 8 regulations.

(b) Where the parent entity PHA is not the owner of the project, the

parent entity PHA or another PHA approvable under § 811.104 must agree to administer the contract pursuant to an ACC with HUD or other arrangements for administration must be established that are acceptable to HUD.

(c) The obligations must be issued by an entity approved by HUD as a PHA pursuant to §§ 811.104 or 811.105.

(d) The field office must have issued a notification pursuant to § 811.117 approving the obligations as tax exempt.

§ 811.104 Approval of public housing agency (other than agency or instrumentality PHA's).

(a) (1) An application to the field office for approval as a public housing agency, including a parent entity PHA, for purposes of this subpart shall be supported by evidence satisfactory to HUD to establish that:

(i) The applicant is legally authorized to engage in or assist in the development or operation of low-income housing and to carry out the responsibilities required of it under this subpart and the applicable section 8 regulations for the project or the financing thereof, as described in its application.

(ii) The applicant has the administrative capability, including any previous experience in multifamily housing programs, to carry out the responsibilities required of it under this subpart and the applicable section 8 regulations for the project, or the financing thereof, as described in its application.

(2) The evidence shall include any facts or documents relevant to the determinations required by §§ 811.104(a)(1) (i) and (ii), including identification of any pending application the applicant has submitted under the act. In the absence of evidence to the contrary, the following evidence shall be considered satisfactory to the field office:

(i) Identification of any previous HUD approval of the applicant as a PHA pursuant to this § 811.104;

(ii) Identification of any prior ACC with the applicant under the act (or under the U.S. Housing Act of 1937 prior to its amendment by the Housing and Community Development Act of 1974); or

(iii) A statement, where applicable, that the applicant is an approved participating agency under 24 CFR Part 883 (State housing finance and development agencies).

(3) The evidence furnished pursuant to the preceding provisions of § 811.104(a) shall be supported by the opinion of a counsel acceptable to the field office that the applicant meets the requirements of this § 811.104(a).

(b) The applicant shall receive no compensation in connection with the financing except for its expenses, as approved by HUD in determining the development cost, expenses of issuing, and the ancillary cost of servicing.

(c) Any subsequent amendments to the documents submitted to HUD pursuant to this § 811.104 must be approved by HUD.

§ 811.105 Approval of agency or instrumentality PHA.

(a) An application to the field office for approval as an agency or instrumentality PHA for purposes of this subpart shall:

(1) Identify the parent entity PHA.

(2) Establish by evidence satisfactory to HUD that:

(i) The parent entity PHA meets the requirements of § 811.104.

(ii) The applicant was properly creatred pursuant to State law as a not-for-profit entity.

(iii) The applicant is legally authorized to engage in or assist in the development or operation of low-income housing and to carry out the responsibilities required of it under this subpart and the applicable section 8 regulations for the project or the financing thereof, as described in its application.

(iv) The applicant has the administrative capability, including any previous experience in multifamily housing programs, to carry out the responsibilities required of it under this subpart and the applicable section 8 regultions for the project, or the financing thereof, as described in its application. Such responsibilitis may consist solely of assisting projects by borrowing and lending funds.

(v) The actions required pursuant to § 811.105(b) to establish the relationship between the parent entity PHA and the applicant required by the act and this subpart have been taken and are not prohibited under State law.

(3) The evidence furnished pursuant to the preceding provisions of § 811.105(a) shall be suported by the opinion of a counsel acceptable to the field office that the applicant meets the requirements of this § 811.105(a).

(b) The charter or other organic document establishing the applicant shall limit the activities to be performed by the applicant, and funds and assets connected therewith, to carrying out or assisting in carrying out section 8 projects. Such organic document shall provide that:

(1) The applicant shall receive no compensation in connection with the financing except for its expenses, as approved by HUD in determining the development cost, expenses of issuing, and the ancillary cost of servicing.

(2) Any net earnings of the applicant may be retained by the applicant but may not inure to the benefit of any persons or entity other than the parent entity PHA or another not-for-profit entity as determined by the parent entity PHA.

(c) The coduments submitted by the applicant shall include the following with respect to the relationship between the parent entity PHA and the agency or instrumentality PHA:

(1) Provisions requiring approval by the parent entity PHA of the charter or other organic instrument and of the bylaws of the applicant, which organic instrument and bylaws shall specify that any amendments are subject to approval by the parent entity PHA and by HUD.

(2) Members, officers, or employees of the parent entity PHA may be directors or officers of the applicant, unless this is contrary to State law.

(3) Provisions requiring approval by the parent entity PHA of each project and of the program and expenditures of the applicant.

(4) Provisions requiring approval by the parent entity PHA of each issue of obligations by the applicant not more than 60 days prior to the date of issue and approval of any amendments to the terms and conditions of the issuance prior to the date of issue.

(5) Provisions requiring the applicant to furnish to the parent entity PHA an annual report on the applicant's activities and an annual audit of the applicant by an independent public accountant, and requiring the parent entity PHA to review the applicant's activities and to furnish to HUD a copy of their review and of the applicant's report and audit, with any comments by the parent entity PHA.

(6) Provisions giving the parent entity PHA right of access at any time to all books and records of the applicant.

(7) Provisions that upon dissolution of the applicant, title to or other interest in any real or personal property that is owned by such applicant at the time of dissolution shall vest in the parent entity PHA or in another not-for-profit entity as determined by the parent entity PHA.

(8) Where the parties have agreed (this is optional with the parties and not required by HUD) that provision should be made in conjunction with the issuance of the obligations for title to or other interest in the real and personal property financed by the obligations to be conveyed at a specified time and/or under specified conditions to the parent entity PHA or another PHA (other than an agency or instrumentality PHA), instruments making such conveyance shall be placed in escrow with instructions that the escrow agent deliver the instruments to the parent entity PHA or other PHA at such specified time and in accordance with such specified conditions. A method other than this escrow procedure may be used if it provides comparable assurance of performance and is approved by the field office. Any conveyance to the parent entity PHA or other PHA shall be free of encumbrances (other than tenant leases) created subsequent to the es-

tablishment of the lien to secure the permanent obligations except as otherwise consented to by the parent entity PHA or other PHA with the approval of HUD.

(9) Evidence of agreement by the parent entity PHA or other PHA to accept title to any real or personal property financed by the obligations pursuant to §§ 811.105(b)(7) and 811.105(b)(8), if applicable, and to comply with the provision of the ACC or contract requiring provision for, in the event of default under the contract, continued operation or ownership of the project by a PHA (other than an agency or instrumentality) or other entity acceptable to HUD to assure continued operation in accordance with the contract.

(d) Any subsequent amendments to the documents submitted to HUD pursuant to this § 811.105 must be approved by HUD.

§ 811.106 Term of contract and of permanent obligations.

(a) The term of the contract shall be for the total number of years approved by the field office pursuant to the applicable section 8 regulations subject to the following additional limitations.

(b) For non-FHA-insured projects:

(1) The term of the contract shall not exceed 30 years, except that in the case of projects that are predominantly (a majority of the units) designed for the nonelderly, the field office may approve a contract term of not to exceed 40 years.

(2) The term of the obligations shall be equal to the term of the contract plus the period between the beginning of the term of the obligations and the date of execution of the contract rounded to the next full year.

(c) For FHA-insured projects:

(1) The term of the contract shall not exceed 20 years.

(2) The term of the obligations and of the FHA-insured mortgage may be for a longer term.

§811.107 Financing documents and data.

(a) A financing agency proposing to issue tax-exempt obligations pursuant to this subpart shall submit the following, which are to be processed as part of the section 8 final proposal (where final documents are not available at this stage, the final proposal may be reviewed on the basis of draft documents, but the final documents must be submitted prior to receiving HUD approval pursuant to this subpart) for the project to be financed:

(1) Copies of the documents relating to the method of financing of the project. Such documents shall include the bond resolution, loan agreement, pledge, regulatory agreement, bond, note, trust indenture, and other related documents, if any, all of which shall be in compliance with all requirements of this subpart and applicable section 8 regulations.

(2) A copy of the official statement or prospectus shall be furnished to the field office for information only. The front page of the official statement or prospectus shall bear a statement substantially as follows: (A) In addition to any other security cited in the statement, the obligations are to be secured by a pledge of an ACC, if applicable, agreement and contract, all to be executed or approved by HUD; (B) the faith of the United States is solemnly pledged to the payment of annual contributions pursuant to the ACC or to the payment of housing assistance payments pursuant to the contract and funds have been obligated by HUD for such payments; (C) except to the extent stated in these contracts and, if applicable, any contract of mortgage insurance, the obligations are not insured or guaranteed by HUD and are not to be construed as an indebtedness of HUD or of the United States; (D) that nothing in the text of the official statement or prospectus is to be interpreted to conflict with (A), (B), and (C) above; and (E) that HUD bears no responsibility for the content of this official statement or prospectus.

(3) Certifications and statements by the financing agency.

(i) A statement of whether or not the obligations are to be issued after competitive bidding (section 811.109) and a certification that the interest rate on the obligations will not exceed the ceiling imposed by this subpart.

(ii) A certification that the amount of debt service payable by the owner shall not exceed the amount required to amortize the total obligations plus the allowed percentage of the total obligations for the ancillary cost of servicing.

(iii) A certification that the terms of the financing and the use of the obligations will be in accordance with this subpart.

(4) An explanation of all reserves or accounts to be established or maintained, how they will be funded and of the flow of funds. The explanation should be in sufficient detail to facilitate field office review.

(5) An opinion from a bond counsel qualified and experienced in governmental or public body bond issuances of a comparable size and complexity with regard to the legality of all aspects of the financing. Where the financing is to be provided under a note and mortgage and no bonds are to be issued, the opinion may be from counsel for the lender, whose qualifications and experience in the field of such mortgage transactions are acceptable to the field office.

(6) Financial data:

(i) For FHA-insured projects, the financial data required for FHA insurance (§ 811.108(a)).

(ii) For non-FHA-insured projects, an itemized statement of the elements of development cost, expenses of issuing, debt service payments on the obligations during the escrow period, debt service reserve, and the total amount of the obligations and, for the purposes of the HUD computation required by § 811.108(b), an estimate of annual income and expenses, the projected interest rate and projected term of the obligations. If it is later decided to issue the obligations at a higher interest rate or a shorter term, an amended final proposal shall be submitted.

(b) The financing agency shall retain in its files, and make available for HUD inspection upon request, the documentation relting to the financing.

(c) In the event a financing agency which has obtained HUD approval of the documents submitted pursuant to this subpart proposes substantive changes in the documents, whether by way of amendment, replacement, or supplementation, such changes must be submitted to the field office for prior approval.

§ 811.108 Amount of permanent obligations and debt service reserve.

(a) *FHA-insured projects.* (1) The amount of the obligations supported by project rental income shall not exceed the amount of the FHA-insured mortgage. The project net income to be used in processing the proposal for mortgage insurance shall be determined by the following calculation: (i) Contract rent as approved by HUD in accordance with the applicable section 8 regulations, (ii) less an allowance for vacancies that shall not be less than 2 percent, (iii) equals adjusted rent, (iv) less HUD-approved operating expenses, (v) equals project net income.

(2) The expenses of issuing that may be included in the FHA-insured mortgage shall not exceed: 5 percent of the first $1 million of obligations; 4 percent of the second $1 million; 3 percent of the third $1 million and 2 percent of any amount over $3 million. All individual items of expense shall be shown to be necessary for the issuance of the obligations and the amount of each shall be shown to be reasonable in relation to the prevailing costs of issuing comparable obligations, taking into account any difference between the types of obligations.

(3) The owner's equity investment, if any, shall be in accordance with requirements for the FHA insurance program.

(4) Prior to the execution of the contract, a profit-motivated owner shall also be required to provide an escrow in the form of cash or an irrevocable letter of credit to meet any potential operating deficit during the early

years of project operation. For syndicated owners the amount to be escrowed shall be 4 percent of the development cost; for other profit-motivated owners, the amount to be escrowed shall be 2 percent. At the end of the third fiscal year (after execution of the contract) one-half of the unused escrow shall be released and at the end of the fourth fiscal year the other half shall be released. For not-for-profit owners the development cost shall include 2 percent of the development cost otherwise calculated as an allowance to make the project operational.

(5) In addition to the amount of the obligations supported by project rental income (the amount of the FHA-insured mortgage), a debt service reserve not to exceed the amount necessary to pay anticipated debt service for 6 months on the amount of the obligations supported by project rental income may be included in the obligations.

(i) The debt service reserve will be established at the execution of the contract and thereafter investment income from the amount of the debt service reserve will be used to pay required interest costs on the obligations attributable to the debt service reserve. In the event such investment income is insufficient, project income may be used to pay the required interest costs on the obligations attributable to the debt service reserve. It is anticipated that payment of the principal attributable to the debt service reserve will be made at the end of the term of the obligations.

(ii) The debt serviee reserve and its investment income shall be available only for the purpose of paying principal or interest on the obligations. The use of the debt service reserve for this purpose shall not be a cure for any failure by the owner to make required debt service payments to the financing agency nor shall it be grounds for failure to declare a default and take other remedial action on account of such payment delinquencies.

(iii) Upon full payment of the principal and interest on the obligations, funds in the debt service reserve shall be remitted to HUD.

(b) *Non-FHA-insured projects.* (1) The amount of the obligations supported by project rental income shall not exceed:

(i) For profit-motivated owners the total derived by capitalizing the project net income, less HUD-approved return on equity, at the debt service rate payable on the total obligations (calcualted on a projected term and projected interest rate on the obligations not to exceed the interest rate on the permanent financing under an FHA-insured mortgage using the tandem plan, GNMA program 25), adjusted to provide for the ancillary cost of servicing.

(ii) For not-for-profit owners, the total derived by capitalizing 95 percent of project net income at the debt service rate payable on the total obligations (calculated on a projected term and projected interest rate on the obligations not to exceed the interest rate on the permanent financing under an FHA-insured mortgage using the tandem plan, GNMA program 25), adjusted to provide for the ancillary cost of servicing.

(iii) The project net income for the above calculations shall be determined by the following calculation: (A) Contract rent as approvd by HUD in accordance with the applicable section 8 regulations, (B) less an allowance for vacancies that shall not be less than 2 percent, (C) equals adjusted rent, (D) less HUD approved operating costs (maintenance and operating expenses, property taxes, hazard insurance, use and occupancy insurance, payments to repair and replacement reserve, administrative costs, and utility costs), (E) equals project net income.

(2) In addition to the amount of the obligations supported by project rental income, a debt service reserve not to exceed the amount necessary to pay anticipated debt service for 1 year on the amount of the obligations supported by project rental income may be included in the obligations.

(i) The debt service reserve will be established at the execution of the contract. The owner's debt service payment shall be based upon the full amount of the obligations (i.e., inclusive of the amount for the debt service reserve) but investment income from the debt service reserve, up to the amount required for debt service on the obligations attributable to the debt service reserve, shall be credited toward the owner's debt service payment. Any excess investment income shall be added to and become a part of the debt service reserve. Payment of the principal attributable to the debt service reserve may be made at the end of the term of the obligations.

(ii) The debt service reserve and investment income thereon shall be available only for the purpose of paying principal or interest on the obligations.

(iii) Upon termination of the contract, funds in the debt service reserve, after payment of the principal attributable to the debt service reserve, shall be remitted to HUD.

(3) The amounts which may be included in the amount of the obligations supported by project rental income for specific purposes shall be subject to the following:

(i) If the proceeds of the permanent obligations are to be placed in escrow pending completion of construction (section 811.112(c)), the amount necessary for debt service payments on the permanent obligations including any debt service reserve, during the anticipated escrow period, less the amount anticipated to be earned by the investment of the funds escrowed or by other project income during this period, may be included.

(ii) The expenses of issuing the obligations shall not exceed: 5 percent of the first $1 million of obligations; 4 percent of the second $1 million; 3 percent of the third $1 million, and 2 percent of any amount over $3 million. All individual items of expense shall be shown to be necessary for the issuance of the obligations and the amount of each shall be shown to be reasonable in relation to prevailing costs of issuing comparable obligations, taking into account any differences between the types of obligations.

(iii) The remaining amount of the obligations supported by project rental income is the maximum that is available for 100 percent of the development cost for not-for-profit owners and 90 percent of the development cost for profit-motivated owners. A profit-motivated owner shall be required to have an equity investment equal to 10 percent of the HUD-approved development cost.

(4) Prior to the execution of the contract a profit-motivated owner shall also be required to provide an escrow in the form of cash or an irrevocable letter of credit to meet any potential operating deficit during the early years of project operation. For syndicated owners the amount to be escrowed shall be 4 percent of the development cost; for other profit-motivated owners the amount to be escrowed shall be 2 percent. At the end of the third fiscal year after execution of the contract, one-half of the unused escrow shall be released and at the end of the fourth year the other half shall be released. For not-for-profit owners, 2 percent of the development cost shall be used to fund the residual reserve.

(c) Notwithstanding the other provisions of this section, in the case of a mortgage transaction that does not involve the sale of bonds, whether FHA insured or non-FHA insured, no debt service reserve shall be included in the obligations, the expenses of issuing shall be reduced to exclude costs associated with bond financing, and the ancillary costs of servicing shall be limited as provided in § 811.109(c).

§811.109 Interest rate and ancillary cost of servicing.

(a) The interest rate on the obligations shall not exceed the interest rate on the permanent financing under an FHA-insured mortgage using the tandem plan (GNMA program 25). Subject to this maximum, the field office may approve an interest rate determined in accordance with either (1) or (2) below.

(1) Under this alternative, obligations to be issued shall be offered for public sale under competitive bidding procedures involving the solicitation of sealed bids. Bids shall be solicited through an advertisement in a newspaper of national circulation, such as the Daily Bond Buyer; if at least two responsive bids are not received in response to this advertisement, the financing agency may choose to place a second advertisement in a newspaper of statewide circulation. The low bid received under this procedure may be accepted if the interest rate is under the maximum rate stated above, provided that at least two responsive bids are received. Evidence of compliance with this paragraph must be demonstrated to the field office prior to issuance of the obligations.

(2) Where the financing agency does not use competitive bidding or where only one responsive bid is received, the maximum interest rate at which the financing agency may issue its obligations shall not exceed the following number of basis points over the 20 Bond Index published by the Daily Bond Buyer for the week immediately preceding the sale of the obligations:

(i) FHA-insured projects—50 basis points.

(ii) Non-FHA-insured elderly projects—75 basis points.

(iii) Non-FHA-insured family projects—100 basis points.

(b) In the case of a mortgage transaction that does not involve the sale of bonds, the field office may approve an interest rate up to the interest rate for the tandem plan (GNMA program 25) without regard to § 811.109(a) (1) and (2) if the financing agency demonstrates that the proposed amount of obligations and interest rate will result in a net savings in annual debt service when compared to the amount of obligations otherwise allowable and financed at the highest interest rate permitted under § 811.109(a)(2) above.

(c) An amount equal to three-tenths of 1 percent of the obligations shall be allowed for the ancillary cost of servicing, except that in the case of a mortgage transaction that does not involve the sale of bonds such amount shall be limited to one-tenth of 1 percent of the obligations.

§811.110 Interim financing.

(a) The terms and conditions of any interim financing shall be consistent with the terms and conditions of the permanent obligations which are proposed or committed for issuance.

(b) The proceeds of the permanent obligations shall be available for repayment of the interim obligations, but only upon execution of the contract and where an escrow is required, in accordance with the terms of the escrow. The risk of completion of the project is upon the developer/owner and the interim lender.

(c) Where tax exemption has been requested for the permanent obligations, the financing agency may also request a determination by the field office that obligations to be issued by the financing agency for interim financing are tax exempt pursuant to this subpart.

(1) The amount of interim obligations shall not exceed 100 percent of the development cost for not-for-profit owners and 90 percent of the development cost for profit-motivated owners.

(2) The interest rate on tax exempt interim financing shall not exceed 90 percent of the Treasury 6-month bill rate prevailing at the time a binding commitment for the interim financing is obtained, except with the written approval of the Assistant Secretary for Housing.

(3) The interim obligations shall mature on a specified date not unreasonably beyond the stated date by which completion is required under the applicable agreement and any extensions of such date approved by HUD.

§ 811.111 Design review and construction inspections.

(a) For FHA-insured projects, the standard FHA procedures shall be followed.

(b) For non-FHA-insured projects:

(1) The plans and specifications shall be reviewed and approved by the field office in accordance with standards applicable to FHA-insured projects.

(2) The interim lender shall provide for inspections during construction, either directly or by agreement with the owner, as the lender deems necessary to protect its interest. Copies of these inspection reports shall be furnished to the financing agency, to the parent entity PHA, where applicable, and to the field office.

(3) HUD inspections during construction shall be performed by a qualified inspecting architect hired by the financing agency after obtaining field office approval of the qualifications of the architect and of the contract under which services are to be performed. This inspection service shall be funded as part of the development cost of the project. Copies of the inspection reports by such an inspecting architect shall be furnished to the field office, the financing agency, the interim lender and the owner.

§ 811.112 Issuance of permanent obligations and escrow period.

(a) The permanent obligations shall be issued at the date determined by the financing agency (subsequent to HUD approval pursuant to section 811.117).

(b) After the permanent obligations are issued, the financing agency shall submit a certification to the field office as to the interest rate on the obligations, the debt service amount to be paid by the owner, and the other terms of the financing. The field office shall amend the contract to reduce the initial contract rents to the extent that the debt service amount to be paid by the owner is lower than the amount projected in processing the project for FHA insurance or in calculating the maximum total obligations to be supported by project rental income (§ 811.108(b)). The amount of the saving shall be credited to the project account (§§ 880.106(b) or 881.106(b)); the maximum ACC or contract commitment shall not be reduced.

(c) If the permanent obligations are issued before completion of construction, the proceeds of the obligations shall, upon receipt, be placed in escrow with the trustee pursuant to the trust indenture, except where (1) there is an unconditional guarantee by a State or by a county, city, or other unit of general local government that in the event of a default prior to execution of the contract, the obligations will be fully redeemed, or (2) construction advances are insured pursuant to the National Housing Act. Disbursements may be made from the escrow prior to execution of the contract only for the expenses of issuing and debt service payments.

(d) In the event that the contract is not executed within 60 days of the date by which completion is required under the applicable agreement, the permanent obligations shall be redeemed from the funds in escrow plus income from investment of the escrowed funds and less any debt service payments or disbursements for expenses of issuing. However, such date for redemption may be extended to a later specified date in the event (1) the parties to the agreement and the trustee have agreed in writing to such extended date, and (2) additional funds, in the form of cash or an unconditional letter of credit, are added to the escrow to guarantee that there will be sufficient funds in the escrow on the extended date to pay all amounts that are then required to be paid from the escrow on at least as favorable a basis as if there had been no extension.

(e) The agreement may contain a provision that in the event of foreclosure by the interim lender by reason of a default prior to acceptable completion of the project, or in the event of assignment or sale by reason of such a default to the interim lender or other party agreed to by the interim lender and approved by HUD, the parties to the agreement (other than the defaulted owner) shall agree to a reasonable extension of the completion date upon request of the interim lender where (1) the trustee has

agreed to the extension, (2) the interim lender has agreed in writing to assure acceptable completion of the project by the extended date, and (3) additional funds, in the form of cash or an unconditional letter of credit, are added to the escrow to guarantee that there will be sufficient funds on the extended date to pay all amounts that are then required to be paid from the escrow on at least as favorable a basis as if there had been no extension.

§ 811.113 Disbursement from escrow upon execution of contract.

(a) The escrowed funds, less approved prior disbursements, shall be disbursed only upon execution of the contract for the project. Where a project is to be completed in stages, disbursement of the escrow in stages may be permitted if arrangements consistent with all requirements of this subpart are made.

(b) If the field office finds that the evidence of completion is acceptable with respect to the physical completion of the project, including the certificate of occupancy and/or other official approvals required for occupancy, but the evidence of completion in other respects is not acceptable, the field office shall upon request by the owner execute or approve the execution of the contract; in such case, however, until the remaining evidence of completion is submitted to and found acceptable by the field office: (i) the contract rent for the purpose of computing housing assistance payments with respect to any unit shall be the monthly amount of the debt service on the permanent obligations attributable to the unit and (ii) rent-up and occupancy shall be subject to such conditions as the field office may require.

(c) The effective date of the contract shall be 10 working days after the notification of project completion to the field office, or the date of the HUD inspection if earlier, provided that the owner's and architect's certifications and other evidence of completion required by the applicable section 8 regulations are found by the field office to be acceptable as of that date. If the certifications and other evidence of completion are found not to be acceptable as of that date, the effective date of the contract shall be the earliest subsequent date as of which the evidence of completion is found by the field office to be acceptable.

(d) For non-FHA-insured projects, the evidence of completion to be submitted in accordance with the agreement shall include cost certification and cost data as required by HUD to support the estimates on which the amount of the permanent obligations was based.

(1) If complete on its face, the certification and data shall be subject only to post-audit. If incorrect or false statements are discovered appropriate action shall be taken against the party submitting such certification or data. There shall be no reduction in the amount of the obligations or in the contract rents.

(2) If the parties wish to execute the contract prior to full completion of the cost certification process, the escrow of the permanent obligations may provide for initial release of funds sufficient to obtain the release of the lien held by the interim lender and for subsequent release of the remaining funds when final cost certification and cost data are submitted.

(3) Upon execution of the contract, the escrowed funds shall be disbursed, to the extent of the amounts stated by the parties submitting the certification, for the approved development cost, the debt service reserve and the residual reserve, as applicable. When all cost certification has been completed and all authorized disbursements have been made, any remaining funds in the escrow shall be placed in the residual reserve.

§ 811.114 Use of project revenues for FHA-insured projects.

(a) In the case of FHA-insured projects the use of project revenues shall be in accordance with the requirements for limited-dividend or not-for-profit owners under the applicable mortgage insurance program.

(b) No gross revenue pledge is permitted for FHA-insured projects. The pledge (section 811.116(b)) of the contract may provide that all payments thereunder shall be paid directly to the mortgagee who shall make all payments or deposits required under the mortgage and who shall remit the excess to the owner.

(c) The escrows and accounts required by this subpart are to be established under applicable FHA procedures or in special accounts, established for the purpose of meeting these requirements.

(d) The agreement and contract shall be incorporated by reference in the regulatory agreement which provides that any default under the agreement or contract may be construed to constitute a default under the regulatory agreement and mortgage in the sole discretion of HUD.

§ 811.115 Trust indenture provisions for non-FHA-insured projects.

(a) The trust indenture shall include the following specific provisions with regard to the financing and the operation of the project and shall be otherwise consistent with this subpart.

(b) The owner shall be required to continue to provide low-income housing for the full term of the contract and the trust indenture shall provide that:

(1) A default under the contract shall constitute a default under the trust indenture.

(2) If HUD finds there is a default under the contract, HUD shall request the trustee to take action to correct the default within a specified reasonable time.

(3) If the default is not corrected within such time, HUD may direct the trustee to declare a default under the trust indenture and to provide for continued operation or ownership of the project by a PHA (other than an agency or instrumentality PHA) or other entity acceptable to HUD to assure continued operation in accordance with the contract.

(c) Project revenues, and all reserves, including interest thereon, established with the proceeds of obligations issued under this subpart shall be used in accordance with provisions in the trust indenture designed to assure that such revenues and reserves are used for the benefit of the project and in accordance with this subpart and that return to the owner is limited as prescribed in § 811.115 (c)(3).

(1) Project revenues shall be used:

(i) To make the payments to the trustee required by the trust indenture.

(ii) To pay operating expenses of the project.

(iii) To make required deposits, including:

(A) Deposits to a maintenance reserve at the rate of one-half of 1 percent of the contract rent as needed to build up and maintain the reserve at a level equal to 2½ percent of the aggregate annual contract rent.

(B) Deposits to a replacement reserve at the rate of 2 percent of the contract rent as needed to build up and maintain the reserve at a level equal to 10 percent of the aggregate annual contract rent.

(iv) Any remaining project revenues shall be deposited in a residual reserve.

(2) The owner may use funds in the residual reserve for any project purpose, including maintenance and replacement or project improvement (but excluding payment into the debt service reserve) with the trustee's prior written approval specifying the purpose for which such funds are to be used. Withdrawals from the maintenance and replacement reserves may be made by the owner with the prior written approval of the trustee and the administrator of the contract specifying the purpose for which such funds are to be used or in accordance with procedures approved by HUD for emergencies or for minor amounts.

(3) At the end of each fiscal year after paying all project expenses, the funds in the residual reserve shall be available to pay to the owner any permitted return on equity investment,

including any short-fall in such return during the previous 5 years. The trustee indenture shall prohibit any return to not-for-profit owners and shall limit return to profit-motivated owners to the following maximum rates of return on equity investment:

(i) Six percent per year for all projects that have syndicated owners, and

(ii) For projects that do not have syndicated owners, 8 percent per year for elderly projects and 10 percent per year for family projects.

(4) If at the end of the fiscal year and after payment to the owner of the permitted return, there are funds in the residual reserve in excess of 20 percent of the annual gross rent in effect on that date, such excess shall be used to reduce housing assistance payments under the contract and thereby add to the project account. Upon termination of the contract, funds in the residual reserve shall be remitted to HUD.

(d) The owner shall be required to furnish to the trustee annually an audit by a certified public accountant of project revenues and of all expenditures of project revenues. The trustee shall review the audit and furnish a copy of this audit and the trustee's report of any project-related problems to the financing agency and the field office. Misuse by the owner of the project revenues shall constitute a default under the trust indenture.

(e) The use of the debt service reserve and disposition of funds in the reserve shall be consistent with section 811.108(b)(2).

(f) All funds held by the trustee under the trustee indenture or as escrows or reserves shall be held as deposits in interest bearing accounts that are federally insured or shall be invested in Treasury securities, securities issued or guaranteed by a Federal agency or securities issued by a U.S. Government sponsored agency to earn interest.

(g) Additional tax-exempt obligations may be issued to finance additional development cost that is shown to be reasonable and is approved by HUD pursuant to this subpart. Contract rents shall not be increased to support any resulting increase in debt service, except to the extent the additional development cost is required by changes in local codes or ordinances made subsequent to the date of the agreement and then only if HUD approval is obtained prior to incorporation of any such changes in the project.

(h) Additional tax-exempt obligations may be issued for project improvements after the second fiscal year under the contract with the approval of the trustee in order to finance additional development cost that is shown to be reasonable and is approved by HUD pursuant to this subpart, provided that HUD approves, pursuant to the applicable section 8 regulations, an increase in the contract rents in an amount sufficient to amortize the additional obligations.

§811.116 Other requirements.

(a) If a project has an executed contract or an executed agreement based on a final proposal that did not include tax-exempt financing under this subpart, conversion to tax-exempt financing under this subpart shall require the prior authorization of the Assistant Secretary for Housing.

(b) The agreement, the contract and the ACC, if applicable, entered into in connection with the project may be pledged or offered as security for obligations issued under this subpart.

(1) The instrument of pledge must be approved by the field office.

(2) Any such pledge or payments thereunder shall be limited to the amounts payable under the contract and/or ACC in accordance with their terms.

(3) In the event of foreclosure, or assignment or sale to the financing agency in lieu of foreclosure, or in the event of assignment or sale agreed to by the financing agency and approved by HUD (which approval shall not be unreasonably delayed or withheld), housing assistance payments shall continue in accordance with the terms of the contract.

(4) In the case of a project financed with obligations that are tax-exempt under section 11(b) of the act and where the mortgage is insured pursuant to section 221 of the National Housing Act, the 1-percent deduction upon assignment to HUD shall not be applicable (24 CFR 221.762(c)).

(c) Issuance of obligations pursuant to this subpart to refund outstanding permanent obligations issued pursuant to this subpart is prohibited.

(d) Obligations shall be prepaid only under such conditions, including reduction of contract rents, as HUD shall require.

(e) The special procedures in 24 CFR Part 883, subpart C otherwise available to a participating agency shall not be applicable to projects financed with obligations issued pursuant to this subpart.

§811.117 Approval of obligations as tax exempt.

(a) The field office director shall send the financing agency a notification of approval of obligations as tax exempt if the field office finds that:

(1) Obligations proposed to be issued for the financing of a low-income housing project are in compliance with this subpart.

(2) The terms and conditions of the financing (not including the official statement or prospectus) have been approved pursuant to this subpart and the applicable section 8 regulations.

(3) The agreement has been executed and, where applicable, approved in writing by HUD.

(b) The notification shall include a statement that:

(1) Pursuant to this subpart and the act, HUD has found the financing agency to be an eligible PHA.

(2) The obligations including interest thereon, when issued in accordance with the approved application, shall be exempt from all taxation now or hereafter imposed by the United States whether paid by the PHA or by HUD.

(3) The income derived by the PHA from the low-income housing project shall be exempt from all taxation now or hereafter imposed by the United States.

(c) If the application included tax exempt interim financing, the notification shall include a statement with regard to such interim financing, including an explicit statement that tax exemption of such obligations is limited to the time for completion of the project stated in the agreement, including any extensions approved by HUD.

§ 811.118 Limited applicability to tax exemption other than under section 11(b).

(a) This subpart shall not be applicable to obligations issued pursuant to or purporting to be tax exempt under any other provision of law or governmental regulation, except that where the permanent financing is by obligations of a public agency or other governmental entity including a PHA (other than an agency which has been notified by HUD pursuant to 24 CFR 883.103 that it is a qualified participating agency) or an entity utilized by such a governmental entity, the entity proposing to issue the obligations shall submit all documents required pursuant to §§ 811.107, 811.108, and 811.110 to the field office for review and approval and the use of the obligations and operation of the project shall be subject to §§ 811.111 through 811.116.

CHANGES TO RELATED REGULATIONS

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—NEW CONSTRUCTION

1. Section 880.115(c) is amended to read as follows:

§ 880.115 Financing.

* * * * *

(c) Applicability of certain provisions of 24 CFR part 811 where financing is by a PHA or entity created or utilized by a PHA.—Where the permanent financing is by obligations of a public agency or other governmental entity including a PHA (other than an agency which has been notified by HUD pursuant to 24 CFR 883.103 that

it is a qualified participating agency) or an entity utilized by such a governmental entity, which obligations are tax exempt pursuant to provisions of law or governmental regulation other than 24 CFR part 811, the provisions of part 811 shall nevertheless be applicable to the extent stated in § 811.118.

2. Section 880.125(a) is amended to read as follows:

§ 880.125 Projects financed with proceeds of obligations issued by a public agency.

(a) Applicability.—The provisions of this section shall apply where permanent financing for a project is to be provided by a public agency or other entity including a PHA ("financing agency"), except for obligations approved under 24 CFR part 811, subpart A, which are not subject to this section.

* * * * *

3. Section 880.201 is amended to include the following second sentence:

§ 880.201 Allocations of contract authority to field offices.

* * * Where the allocation identifies contract authority that is set aside for public housing agency owned (PHA-owner) units, the NOFA or other invitation shall state that the authority is available only for projects of PHA's organized under a State housing authorities law (not including an agency or instrumentality of such a PHA, unless such an entity is specifically determined to be eligible) ahd only proposals submitted by such entities shall be accepted for processing.

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SUBSTANTIAL REHABILITATION

4. Section 881.115(c) is amended to read as follows:

§ 881.115 Financing.

* * * * *

(c) Applicability of certain provisions of 24 CFR Part 811 where financing is by a PHA or entity created or utilized by a PHA.—Where the permanent financing is by obligations of a public agency or other governmental entity including a PHA (other than an agency which has been notified by HUD pursuant to 24 CFR 883.103 that it is a qualified participating agency) or an entity utilized by such a governmental entity which obligations are tax exempt pursuant to Treasury Department regulations, rather than 24 CFR Part 811, the provisions of part 811 shall nevertheless be applicable to the extent stated in section 811.118.

5. Section 881.125(a) is amended to read as follows:

§ 881.125 Projects financed with proceeds of obligations issued by a public agency.

(a) *Applicability.* The provisions of this section shall apply where permanent financing for a project is to be provided by a public agency or other entity including a PHA ("financing agency"), except for obligations approved under 24 CFR Part 811, subpart A, which are not subject to this section.

6. Section 881.201 is amended to include the following second sentence:

§ 881.201 Allocations of contract authority to field offices.

* * * Where the allocation identifies contract authority that is set aside for public housing agency owned (PHA-owner) units, the NOFA or other invitation shall state that the authority is available only for projects of PHA's organized under a State housing authorities law (not including an agency or instrumentality of such PHA, unless such an entity is specifically determined to be eligible) and only proposals submitted by such entities shall be accepted for processing.

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

7. Section 221.762 is amended to add a new paragraph (c):

§ 221.762 Payment of insurance benefits.

* * * * *

(c) Projects financed with section 11(b) obligations. Where the funds for a mortgage loan are provided by obligations that are tax exempt under section 11(b) of the U.S. Housing Act of 1937 (24 CFR Part 811), the 1 percent deduction from insurance benefits prescribed in § 207.259(b)(2)(iv) of this chapter shall not be applicable.

(Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d); secs. 3(6), 5(b), 8, 11(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f, and 1437i.)

Issued at Washington, D.C., July 10, 1978.

LAWRENCE B. SIMONS,
Assistant Secretary for Housing,
Federal Housing Commissioner.

[FR Doc. 78-19407 Filed 7-11-78; 1:55 pm]

federal register

FRIDAY, JULY 14, 1978
PART VI



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

■

RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER THE PACKERS AND STOCKYARDS ACT

Reparation Proceedings

[3410-02]

Title 9—Animals and Animal Products

CHAPTER II—AGRICULTURAL MARKETING SERVICE (PACKERS AND STOCKYARDS), DEPARTMENT OF AGRICULTURE

PART 202—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER THE PACKERS AND STOCKYARDS ACT

Rules Applicable To Reparation Proceedings

AGENCY: Agricultural Marketing Service (Packers and Stockyards), USDA.

ACTION: Final rules of practice.

SUMMARY: This is a revision of the already existing rules of practice applicable to reparation proceedings under the Packers and Stockyards Act, 1921, as amended. This revision, for the most part, only clarifies the meaning of the rules as previously in effect, incorporates in the rules certain interpretations previously made in cases, and conforms the rules to practices previously followed.

EFFECTIVE DATE: September 1, 1978. Reparation proceedings pending on such date shall be handled pursuant to the rules as revised herein ("new rules") rather than pursuant to the rules as in effect prior to such date ("old rules"), unless any party objects as provided below.

FOR FURTHER INFORMATION CONTACT:

John J. Casey, Attorney, Office of the General Counsel, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-7357.

SUPPLEMENTARY INFORMATION: The basis for deciding on this revision of the old rules is that they incorporate other rules which have been superseded. Those are the rules of practice applicable to disciplinary proceedings under the Act, which were superseded by the rules of practice governing formal adjudicatory proceedings instituted by the secretary under various statutes, 7 CFR 1.130 et seq., 42 FR 743 et seq., 5341. See 42 FR 5677.

Public participation in this revision is not believed to be necessary, because this revision is expected to have little if any impact. For the most part, it only clarifies the meaning of the rules as previously in effect, incorporates in the rules certain interpretations previously made in cases, and conforms the rules to practices previously followed. Some changes are made, such as some of the changes made in the rule on depositions, and the provision for appointment of a presiding officer in connection with a petition for reconsideration, but these are expected to have little if any impact other than to take the same action more efficiently.

Notice of proposed rulemaking is not required by Law for this revision, on the basis that this revision constitutes "rules of agency * * * procedure, or practice" under 5 U.S.C. 553(b)(A).

This revision is not within the Department's proposed criteria for designating a regulation as "significant," published at 43 FR 21986 et seq. in compliance with Executive Order 12044 on "Improving Government Regulations."

This revision was begun before that Executive order was issued. The rules have not received the sort of "Review of Existing Regulations" provided for in that Executive order. This does not mean that they will not receive such a review. Regulations will be proposed and scheduled for such review as provided in that Executive order and the Department's response to it. We believe that this revision should facilitate such a review of the rules by clarifying how the reparation proceedings are currently being handled.

About proceedings pending on the effective date of this revision, we believe that the fact that any such proceeding is handled pursuant to the new rules, instead of the old rules, will not affect its outcome. However, if any party to such a proceeding, at any time, objects to its handling pursuant to the new rules, such party may state such objection in writing. Also, if any party to such a proceeding, after issuance of the final order in the proceeding, objects to its handling pursuant to the new rules, such party may state such objection in a petition for rehearing, reargument, or reconsideration, as provided in either the new rules or the old rules. Any such party must state in what way the outcome of the proceeding is expected to be, or has been, affected by its handling pursuant to the new rules instead of the old rules. Any such objection shall be carefully considered, and the old rules shall be followed in the proceeding if and as the interests of justice require.

Accordingly, 9 CFR 202.39 through 202.59, inclusive, are hereby revoked, and new 9 CFR 202.101 through 202.123, inclusive, are hereby issued to read as set forth below.

(Sec. 407, 42 Stat. 169, as amended, 72 Stat. 1750, 77 Stat. 79, and 90 Stat. 1252-3; (7 U.S.C. 228; 7 CFR 2.17, 2.50, 42 FR 65131-2, 65223).)

Done at Washington, D.C., this 11th day of July 1978.

CHAS. B. JENNINGS,
Acting Deputy Administrator, Packers and Stockyards, Agricultural Marketing Service.

RULES OF PRACTICE APPLICABLE TO REPARATION PROCEEDINGS

Sec.

202.101 Rule 1: Meaning of words.
202.102 Rule 2: Definitions.
202.103 Rule 3: Beginning a reparation proceeding.
202.104 Rule 4: Agency action.
202.105 Rule 5: Filing; time for filing; service.
202.106 Rule 6: Answer.
202.107 Rule 7: Reply.
202.108 Rule 8: Docketing of proceeding.
202.109 Rule 9: Depositions.
202.110 Rule 10: Prehearing conference.
202.111 Rule 11: Hearing; oral or written.
202.112 Rule 12: Oral hearing.
202.113 Rule 13: Written hearing.
202.114 Rule 14: Post-hearing procedure.
202.115 Rule 15: Submission for final consideration.
202.116 Rule 16: Issuance of order.
202.117 Rule 17: Petition to reopen a hearing; to rehear or reargue a proceeding; to reconsider an order; or to set aside a default order.
202.118 Rule 18: Presiding Officer.
202.119 Rule 19: Fees of witnesses.
202.120 Rule 20: Official notice.
202.121 Rule 21: Intervention.
202.122 Rule 22: Ex parte communications.
202.123 Rule 23: Action by Secretary.

AUTHORITY: Sec. 407, 42 Stat. 169, as amended, 72 Stat. 1750, 77 Stat. 79, and 90 Stat. 1252-3; 7 U.S.C. 228; 7 CFR 2.17, 2.50, 42 FR 65131-2, 65223.

RULES OF PRACTICE APPLICABLE TO REPARATION PROCEEDINGS

§ 202.101 Rule 1: Meaning of words.

In these rules, words in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 202.102 Rule 2: Definitions.

Terms defined in the Act shall mean the same in these rules as in the Act. In addition, and except as may be provided otherwise in these rules:

(a) "Act" means the Packers and Stockyards Act, 1921, and legislation supplementary thereto and amendatory thereof, 7 U.S.C. 181 et seq.;

(b) "Department" means the United States Department of Agriculture;

(c) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority is lawfully delegated to act for the Secretary;

(d) "Judicial Officer" means the official of the Department delegated authority by the Secretary, pursuant to the Act of April 4, 1940 (7 U.S.C. 450c-450g) and Reorganization Plan No. 2 of 1953, to perform the function involved (see 7 CFR 2.35);

(e) "Agency" means those divisions and offices of the Agricultural Mar-

keting Service of the Department which are charged with administration of the Act;

(f) "Agency Head" means the Deputy Administrator, Packers and Stockyards, Agricultural Marketing Service, of the Department, or any officer or employee of the Agency to whom authority is lawfully delegated to act for the Deputy Administrator;

(g) "Hearing Clerk" means the Hearing Clerk of the Department (see 7 CFR 2.25(a)(3));

(h) "Presiding Officer" means any attorney who is employed in the Office of the General Counsel of the Department and is assigned so to act in a reparation proceeding;

(i) "Reparation proceeding" or "Proceeding" means a proceeding under the Act before the Secretary, in which an order for the payment of money is claimed and in which the Secretary is not a party of record;

(j) "Complainant" means the party who files a complaint and claims reparation, or on whose behalf a complaint is filed and reparation is claimed, in a reparation proceeding;

(k) "Respondent" means the party against whom a complaint is filed and reparation is claimed, in a reparation proceeding;

(l) "Docketing" of a reparation proceeding means transmittal of papers to the Hearing Clerk and assignment of a docket number as provided in Rule 8, § 202.108, of these rules;

(m) "Hearing" means that part of a reparation proceeding which involves the submission of evidence for the record and means either an oral or a written hearing;

(n) "Report" means the report to the Judicial Officer of the presiding officer's recommended findings of fact and conclusions with respect to all material issues of fact, law or discretion, as well as the reasons or basis therefor, and order, in a reparation proceeding.

§ 202.103 Rule 3: Beginning a reparation proceeding.

(a) *Filing.* A reparation proceeding is begun by filing a complaint. Any interested person (including any agency of a state or territory having jurisdiction over persons subject to the Act in such state or territory) desiring to complain of anything done or omitted to be done by any stockyard owner, market agency, or dealer in violation of the provisions of sections 304, 305, 306, or 307, or of an order of the Secretary made under title III, of the Act, may file a complaint to begin a reparation proceeding.

(b) *Form.* The complaint must be in writing, state the facts of the matter complained of, identify each person complained against (respondent), and identify each person who complains against such respondent and claims reparation from such respondent. It may be on a printed form supplied by the Agency, or may be a formal document, or may be a letter, mailgram, or telegram. It may be typewritten or handwritten. If it is not on a printed form supplied by the Agency, the Agency Head may, prior to docketing of the proceeding, recommend to the complainant that an amended complaint be filed on such a printed form.

(c) *Contents and attachments.* So far as practicable, the complaint should include the following items as applicable:

(1) Date and place where the alleged violation occurred;

(2) Quantity and quality of the livestock involved;

(3) Whether a sale is involved and, if so, the date, sale price, and amount actually paid and received;

(4) Whether a consignment is involved and, if so the date, reported proceeds, gross, net;

(5) Amount of reparation claimed, and method of computation;

(6) Name and address of each partner or member, if a partnership or joint venture is involved;

(7) Name and address of each person involved, including any agent representing the complainant or the respondent in the transaction involved;

(8) Other material facts, including terms of contract; and

(9) True copies of all available papers relating to the transaction complained about, including shipping documents, letters, telegrams, invoices, manifests, accounts of sales, and special contracts or agreements, and checks and drafts. If it appears that any such item has been omitted from the complaint, the Agency Head may, prior to docketing of the proceeding, recommend to the complainant that such item be supplied by written amendment to the complaint.

(d) *Where to file.* The complaint should be transmitted or delivered to any area office of the Agency, or to the headquarters of the Agency in Washington, D.C., or delivered to any full time employee of the Agency.

(e) *Time for filing.* The complaint must be received by the Department within 90 days after accrual of the cause of action alleged in it. If a complaint is transmitted or delivered to an office of the Department, it shall be deemed to be received by the Department when it reaches such office. If a complaint is delivered to a full time employee of the Agency, it shall be deemed to be received by the Department when it is received by such employee.

(f) *Amendment.* The complaint may be amended at any time prior to the close of an oral hearing or the filing of the last evidence in a written hearing, except that:

(1) An amendment cannot add a respondent if it is filed more than 90 days after accrual of the cause of action against such respondent;

(2) An amendment cannot state a new and different cause of action if it is filed more than 90 days after accrual of such new and different cause of action; and

(3) After the first amendment, or after the filing of an answer by the respondent, an amendment may not be filed without the written consent of the respondent, or leave of the presiding officer, or, prior to docketing of the proceeding, leave of the Agency Head. Any such amendment must be filed in writing and signed by the complainant or the attorney or representative of the complainant. If any such amendment is filed before the initial service of the complaint on the respondent, it shall be served on the respondent only if the complaint is served as provided in Rule 4(b), § 202.104(b). If any such amendment is filed after such service, it shall be served on the respondent in any case.

(g) *Withdrawal.* At any time, a complainant may withdraw a complaint filed by or on behalf of the same complainant, thus terminating the reparation proceeding on such complaint unless a counterclaim or another complaint is pending therein. If a complainant fails to cooperate with the Secretary in the disposition of the matter complained of, such complainant may be presumed to desire to withdraw the complaint filed by or on behalf of such complainant, after service on the parties of written notice of the facts of such failure and reasonable opportunity for such complainant to state whether such presumption is correct.

§ 202.104 Rule 4: Agency action.

(a) *Informal disposition.* If there appears to be any reasonable ground for doing so, the Agency Head shall investigate the matter complained of. If the Agency Head reasonably believes that there are not sufficient facts to form the basis for further proceeding, the matter may be dropped, without prejudice to subsequent court action on the same cause of action; if it is dropped, the person filing the complaint shall be informed. If the statements in the complaint, and information obtained in the investigation, seem to warrant such action, the Agency Head may make an effort to obtain the consent of the parties to an amicable or informal adjustment of the matter by communication with the parties or their attorneys or representatives. Such communication may be written or oral or both.

(b) *Service of complaint.* If the matter is not disposed of as provided in paragraph (a), the complaint, together with any amendment which has been filed, shall be served on the respondent with a notice that an answer is required.

(c) *Service of report of investigation.* A report prepared by the Agency, of its investigation of the matter complained of, and supplements to such a report, may be served on the parties and made a part of the record of the proceeding. Whether such a report or supplement shall be prepared, and whether it shall be served on the parties and made a part of the record, and its contents, shall be in the discretion of the Agency Head. The Judicial Officer shall consider information in such a report or supplement as part of the evidence in the proceeding, to the extent that such information is relevant and material to the proceeding. Any party may submit evidence in rebuttal of such information as is provided generally in these rules for the submission of evidence. Oral testimony, to the extent credible, shall be given greater weight as evidence than such information.

§ 202.105 Rule 5: Filing; time for filing; service.

(a) *Filing; number of copies.* Prior to docketing of a proceeding under these rules, all documents and papers other than the initial complaint, filed in the proceeding, shall be filed with the Agency. After such docketing of a proceeding, all such documents and papers shall be filed with the hearing clerk, *Provided,* That all such documents and papers, except a petition for disqualification of a presiding officer, shall be filed with the presiding officer if the parties have been served with written notice to do so. Each such document or paper shall be filed in quadruplicate with an extra copy for each party in excess of two, except as otherwise provided in these rules. Any document or paper not filed in the required number of copies, except an initial complaint, may be returned to the party filing it.

(b) *Effective date of filing.* Any document or paper other than an initial complaint, filed in a proceeding under these rules, shall be deemed to be filed at the time when it reaches the headquarters of the Department in Washington D.C., or, if authorized to be filed with an officer or employee of the Department at any place outside the District of Columbia, it shall be deemed to be filed at the time when it reaches the office of such officer or employee.

(c) *Additional time for filing.* The time for the filing of any document or paper other than an initial complaint, in a proceeding under these rules, may upon request be extended as reasonable, by the agency head prior to docketing of the proceeding, or by the presiding officer, or by the judicial officer; notice of any extension of time shall be served on all parties. After docketing of the proceeding, in all instances in which time permits, notice of a request for extension of time shall be given to parties other than the one filing such request, with opportunity to submit views concerning the request.

(d) *Computation of time.* Saturdays, Sundays, and Federal holidays shall be included in computing the time allowed for the filing of any document or paper: *Provided,* That, when such time expires on a Saturday, Sunday, or Federal holiday, such time shall be extended to include the next following business day.

(e) *Service; proof of service.* (1) All documents or papers required under these rules to be served in a proceeding, prior to docketing thereof, shall be served by the agency head. After such docketing, all such documents or papers shall be served by the hearing clerk, except such documents or papers as the presiding officer elects to serve, and except as otherwise provided in these rules for a subpena. Any other employee of the Department, or a U.S. marshal or deputy of a U.S. marshal, may serve any such document or paper at the request of the agency head, hearing clerk, or presiding officer.

(2) Service of any such document or paper shall be made by mailing a copy by registered or certified mail, addressed to the person to be served, at such person's last known residence, principal office, place of business, or other mailing address, or to the attorney or representative of record of such person, at such attorney's or representative's last known mailing address: *Provided,* That if the document or paper is not a complaint, and if the copy, sent by certified or registered mail, is returned undelivered because the addressee refused or failed to accept delivery, service shall be made by remailing it by regular mail. Proof of such service shall be made by the return post office receipt in the case of registered or certified mail, or by the certificate of the person who mailed the matter by regular mail, except as otherwise provided in these rules for a subpena. The proof of service shall be filed as a part of the record in the proceeding.

(3) In the alternative, service of any such document or paper may be made either: (i) By delivering a copy to the individual to be served, or to a member of the partnership to be served, or to the president or other executive officer or any director of the corporation or association to be served, or to the attorney or representative of record of such person to be served; or (ii) by leaving a copy at the residence of such individual, or the principal office or place of business of such individual, partnership, corporation, or association, or the residence, principal office, or place of business of the attorney or representative of record of such person to be served, notwithstanding what is provided above in paragraph (e)(2) of this section. Proof of such service shall be made by the certificate of the person who actually delivered or left the copy, except as otherwise provided in these rules for a subpena. The proof of service shall be filed as a part of the record in the proceeding.

(4) Any order of a presiding officer which is made on the record at an oral hearing and shown in the transcript thereof, shall be deemed to be served on all parties present or represented at such oral hearing, notwithstanding what is provided above in paragraph (e) (1) through (3) of this section.

(f) *Service by parties.* If any party files any document or paper other than a complaint, and certifies on it that such party has mailed a copy of it to any other party or to counsel or representative of record for any other party, it shall be presumed to have been served on such other party, and the number of copies of it required to be filed shall be reduced by the number of copies of it so presumed to have been served, notwithstanding any contrary provision in paragraph (a) or (e) of this section.

§ 202.106 Rule 6: Answer.

(a) *Filing and service.* Within 20 days after service on a respondent, of a complaint or amendment of a complaint, such person shall file an answer in writing, signed by such person or by the attorney or representative of such person. If a respondent desires an oral hearing, a request for it should be included with the answer of such person. If any answer or amended answer is filed, it shall be served on the complainant.

(b) *Required contents.* If a respondent desires to make a defense, the answer of such person shall contain a precise statement of the facts which constitute the grounds of defense, and shall specifically admit, deny, or explain each of the allegations of the complaint, except that, if the respondent is without knowledge, such answer shall state that. If a respondent does not desire to make a defense, the answer of such person shall contain an admission of all the allegations of the complaint, or an admission of liability to the complainant in the full amount claimed by the complainant as reparation, or both. An answer may be stricken for failure to comply with these requirements; notice of an order so striking an answer shall be served on the parties; within 20 days after service on a respondent of such a notice, such person shall file an answer which complies with these requirements.

(c) *Setoff, counterclaim or cross-claim.* The answer may assert a setoff, counterclaim, or cross-claim, or any

combination thereof. No counterclaim or cross-claim shall be considered unless it is based on a violation for which the act authorizes reparation to be ordered to be paid, and filed within 90 days after accrual of the cause of action alleged therein: *Provided*, That a counterclaim not filed within such time limit may be considered if based on a transaction complained of in the complaint. Any cross-claim asserted against a co-respondent, based on a violation for which the act authorizes reparation to be ordered to be paid, and filed within 90 days after accrual of the cause of action alleged therein, shall be served on such person as a complaint; within 20 days after such service, such person shall file an answer thereto in compliance with the above requirements for an answer to a complaint.

(d) *Failure to file.* If a respondent fails to file an answer as required above, such persons shall be deemed to have admitted all the allegations of the complaint or cross-claim against such person, and to have consented to the issuance of a final order in the proceeding, based on all evidence in the record. For this purpose, the evidence in the record may include information contained in a report of investigation made a part of the record pursuant to rule 4(c), § 202.104(c), and evidence received in a hearing, oral or written, held subsequent to the expiration of the time for filing such answer, but shall not be limited to such information and evidence. Such a respondent shall not be entitled to service provided in these rules, of any notice or document except the final order in the proceeding.

§ 202.107 Rule 7: Reply.

(a) *Filing and service.* If the answer asserts a counterclaim or a setoff, the complainant may file a reply in writing within 10 days after service of the answer on such person. If any reply or amended reply is filed, it shall be served on the respondent.

(b) *Contents.* The reply shall be confined strictly to the matters alleged in the counterclaim or setoff asserted in the answer. It shall contain a precise statement of the facts which constitute the grounds of defense to the counterclaim or setoff and shall specifically admit, deny, or explain each of the allegations of the answer constituting such counterclaim or setoff, except that, if the complainant is without knowledge, the reply shall state that.

(c) *Failure to file.* If no reply is filed, the allegations of the answer shall be regarded as denied.

§ 202.108 Rule 8: Docketing of proceeding.

Promptly following receipt of the answer, or the reply (if the answer asserts a counterclaim or a setoff), or following the expiration of the period of time prescribed above for the filing of the answer or of the reply, the agency head shall transmit all of the papers which have been filed in the proceeding (including the investigation report if any has been served on the parties) to the hearing clerk, who shall assign a docket number to the proceeding. Thereafter the proceeding shall be referred to by such number. The hearing clerk shall promptly transmit all such papers to the Office of the General Counsel for assignment of a presiding officer.

§ 202.109 Rule 9: Depositions.

(a) *Application.* Any party may file an application for an order for the taking of testimony by deposition, at any time after docketing of a proceeding and before the close of an oral hearing or the filing of such party's evidence in a written hearing therein. The application shall set forth: (1) The name and address of the proposed deponent; (2) the name and address of the person (referred to in this section as the "officer") before whom the proposed examination is to be made; (3) the reasons why such deposition should be taken, which must show that it may be able to be used as set forth in paragraph (i) of this section; (4) whether the proposed examination is to be on interrogatories or oral; and (5) if oral, a suggested time and place where the proposed examination is to be made. The application shall be in writing unless it is made orally on the record at an oral hearing.

(b) *Response; service.* If any such application is made orally on the record at an oral hearing, each party other than the applicant, present at such hearing, may respond to it orally. If any such application is in writing it shall be served on each party other than the applicant, and each such other party shall have not less than 10 days, from the date of service on such party of the application, to file a written response to it.

(c) *Interrogatories (written questions).* The presiding officer may direct, or the parties may agree, that the deposition, if taken, shall be taken by means of interrogatories. If the presiding officer finds, upon the protest of a party to the proceeding, that such party has a principal place of business or residence more than 100 miles from the place of the examination and that it would constitute an undue hardship on such party to be present or represented at an oral examination at such place, the deposition, if taken, shall be taken by means of interrogatories. In any such case the presiding officer shall state on the record at the oral hearing that, or shall serve the parties with notice that, the deposition, if taken, shall be taken by means of interrogatories, and the applicant shall be given not less than 10 days to file interrogatories in writing. Thereafter, if the applicant does not timely file such interrogatories, the application may be denied. If the applicant timely files such interrogatories, they shall promptly be served on the other parties to the proceeding, and the other parties shall be given not less than 10 days, from the respective dates of service of such interrogatories on them, to file cross-interrogatories in writing. If any such cross-interrogatories are timely filed, they shall promptly be served on all parties other than the party filing them. If the examination will be oral, parties who will not be present or represented at it may file interrogatories in writing with the officer prior to the time for the examination.

(d) *Order.* The presiding officer, if satisfied that good cause for taking the deposition is present, may order its taking. The order shall be served on the parties and shall include: (1) The name and address of the officer before whom the examination is to be made; (2) the name of the deponent; (3) whether the examination will be oral or on interrogatories; and (4) if the examination will be oral, the time, which shall be not less than 10 days after the issuance of the order, and place. If the examination will be on interrogatories, the interrogatories and cross-interrogatories previously filed by the parties shall be served on the officer at the same time, and the order shall prescribe a reasonable time limit within which the examination shall be made. The officer, time, and place need not be the same as those suggested in the application.

(e) *Qualifications of officer.* No deposition shall be made except before an officer authorized by the law of the United States or by the law of the place of the examination to administer oaths, or before an officer authorized by the Secretary to administer oaths, or before the presiding officer. No deposition shall be made before an officer who is a relative (within the third degree by blood or marriage), employee, attorney, or representative of any party (or an employee of an attorney or representative of any party), or who is financially interested in the result of the proceeding.

(f) *Procedure on examination.* The deponent shall be examined under oath or affirmation, and the testimony of the deponent shall be recorded by the officer, or by some person under the direction and in the presence of the officer. If the examination is on interrogatories, they shall be propounded by the officer. If the examination is oral, the deponent shall be examined first by the party at whose instance the deposition is taken, or the representative of such party, and shall be subject to cross-examination by any

other party or the representative thereof who is present at the examination; the officer shall propound any interrogatories filed with the officer by parties not present or represented at the examination.

(g) *Certification and filing by officer.* The officer shall certify on the transcript that the deponent was duly sworn by the officer and that the transcript is a true record of the deponent's testimony, with such exceptions as the certificate shall specify. The officer shall then securely seal the transcript, together with three copies of the transcript, with an extra copy for each party in excess of two, in an envelope, and mail the same by registered or certified mail to the presiding officer.

(h) *Service; correction.* After the transcript is received by the presiding officer, it shall promptly be served on all parties. Any party, within 10 days after such service, may file a written motion proposing corrections to the transcript. Any such motion shall be served on each party other than the one filing it, who shall have 10 days to file a written response to it. Any such response shall be served on each party other than the one filing it. Such documents, if filed, shall be a part of the record of the proceeding if any portion of the transcript is made a part of the record. All portions of the transcript which are not referred to in any such motion shall be presumed to be accurate except for obvious typographical errors.

(i) *Use.* If a written hearing is held, a transcript, of a deposition ordered and taken in accord with the provisions of this section, may be made a part of the record as evidence by any party, by written motion filed with such party's evidence. If an oral hearing is held, except as otherwise provided in these rules, such a transcript may be made a part of the record as evidence, on written motion filed by any party, or oral motion of any party made at the oral hearing, if no party objects after reasonable notice and opportunity to do so, or if the presiding officer finds that the evidence is otherwise admissible and: (1) That the witness is dead; (2) that the witness is unable to attend or testify for any good reason including age, sickness, infirmity, or imprisonment; (3) that the party offering the transcript has tried without success to procure the attendance of the witness by subpena; or (4) that such exceptional circumstances exist as to make it desirable, in the interests of justice and with due regard to the importance of presenting the testimony orally before the presiding officer, to allow the transcript to be used. If any portion of a transcript of a deposition is made a part of the record as evidence on motion of any party, any other party may make a part of the record as evidence the remainder, or any other portion, of the transcript.

(j) *Expenses.* Fees and reimbursements payable to an officer taking a deposition, or other person recording the testimony therein, shall be paid by the party at whose instance the deposition is taken.

(k) *Subpenas.* No subpena can issue, to compel attendance, testimony, or production of documentary evidence, at an examination under this rule 9.

(l) *Agreement of parties.* In any case, any transcript of any deposition, or any part of such a transcript, may be made a part of the record as evidence by agreement of the parties other than a party failing to file an answer as required in these rules.

§ 202.110 Rule 10: Prehearing conference.

(a) The presiding officer, at any time prior to the commencement of the hearing, may request the parties or their counsel to appear at a conference before the presiding officer to consider: (1) the simplification of issues; (2) the necessity of amendments to pleadings; (3) the possibility of obtaining stipulations of fact and of the authenticity, accuracy, and admissibility of documents, which will avoid unnecessary proof; (4) the limitation of the number of expert or other witnesses; (5) the negotiation, compromise, or settlement of issues; (6) the exchange of copies of proposed exhibits; (7) the identification of documents or matters of which official notice may be requested; (8) a schedule to be followed by the parties for completion of the actions decided at the conference; or (9) such other matters as may expedite and aid in the disposition of the proceeding. No transcript of such a conference shall be made, but the presiding officer shall prepare and file for the record a written summary if any action is taken at the conference, which shall incorporate any written stipulations or agreements made by the parties at the conference or as a result of the conference.

(b) If the circumstances are such that appearance at a conference is impracticable, the presiding officer may conduct such a conference by telephone conference call, or request the parties to correspond with the presiding officer for the purpose of accomplishing any of the objects set forth in this rule 10. The presiding officer shall forward copies of letters and documents to the parties as the circumstances require. Correspondence in such negotiations shall not be a part of the record, but the presiding officer shall submit a written summary for the record if any action is taken.

§ 202.111 Rule 11: Hearing, oral or written.

(a) *When held.* A hearing, oral or written, shall be held unless (1) each respondent admits or is deemed to admit sufficient allegations of the complaint to support the full amount claimed by the complainant as reparation; (2) each respondent admits liability to the complainant in the full amount claimed by the complainant as reparation; (3) before a hearing has been completed the parties agree in writing that the proceeding may be decided on the basis of the record as it stands at the time such agreement is filed; or (4) before a hearing has been completed the parties settle their dispute or the complainant withdraws the complaint.

(b) *Whether oral or written.* The hearing provided for in paragraph (a) of this section shall be oral if (1) any respondent files a written request for an oral hearing with such respondent's answer, or (2) any complainant files a written request for an oral hearing on or before the 10th day after service on such complainant of notice that no respondent has timely requested an oral hearing, or (3) the presiding officer decides at any time prior to submission of the report that the hearing should be oral. The hearing shall be written if not oral.

(c) *Withdrawal of request.* If a party has timely filed a request for oral hearing, such party may withdraw such request at any time prior to completion of an oral hearing. If such a withdrawal leaves no pending request for oral hearing in the proceeding, and if the presiding officer has not decided that the hearing should be oral, each other party shall be served with notice of this and shall be given 10 days to request an oral hearing. If any party files a request for oral hearing in such time, the hearing shall be oral.

(d) *Presiding officer's recommendation.* The presiding officer may recommend voluntary withdrawal of a request for oral hearing, timely filed. Declining to make such withdrawal shall not affect the rights or interests of any party.

(e) *Representation.* Any party may appear in an oral hearing, or file evidence in a written hearing, in person or by counsel or other representative. For unethical or contumacious conduct in or in connection with a proceeding, the presiding officer may preclude a person from further acting as attorney or representative for any party to the proceeding; any such order of the presiding officer shall be served on the parties; an appeal to the judicial officer may be taken from any such order immediately.

§ 202.112 Rule 12: Oral hearing.

(a) *Time and place.* If and when the proceeding has reached the stage where an oral hearing is to be held, the presiding officer shall set a time and place for oral hearing, giving careful consideration to the convenience of

the parties. The place shall be set in accordance with subsections (e) and (f) of section 407 of the act, if applicable. In essence, under those subsections, if the complainant and the respondent, or all parties if there are more than two, have their principal places of business or residence within a single unit of local government, a single geographic area within a State, or a single State, the oral hearing is to be held as near as possible to such places of business or residence, depending of course on the availability of a courtroom or other appropriate hearing room; however, if the parties have such places of business or residence distant from each others', then those subsections are not applicable.

(b) *Notice.* A notice stating the time and place of oral hearing shall be served on each party prior to such time. If any change is made in the time or place of the oral hearing, a notice of such change shall be served on each party prior to the time of the oral hearing as changed, unless the change is made during the course of an oral hearing and shown in the transcript. Any party may waive such notice, in writing, or orally on the record at an oral hearing and shown in the transcript.

(c) *Failure to appear.* If any party to the proceeding, after being duly notified, fails to appear at the oral hearing in person or by counsel or other representative, such party shall be deemed to have waived the right to add any further evidence to the record in the proceeding, or to object to the admission of any evidence; if the parties who are present are all adverse to such party, they shall have an election to present evidence, in whole or in part, in the form of oral testimony before the presiding officer, affidavits, or depositions.

(d) *Order of proceeding.* Complainant shall proceed first, if present at the commencement of the oral hearing.

(e) *Evidence.*—(1) *In general.* The testimony of witnesses at an oral hearing shall be on oath or affirmation and subject to cross-examination. Any witness other than a party may be examined separately and apart from all other witnesses, in the discretion of the presiding officer. The presiding officer shall exclude evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort on which responsible persons are accustomed to rely, insofar as practicable.

(2) *Objections.* If a party objects to the admission of any evidence or to the limitation of the scope of any examination or cross-examination or to any other ruling of the presiding officer, such party shall state briefly the grounds of such objection, and the presiding officer shall rule on it. The transcript shall include argument or debates thereon, except as ordered by the presiding officer, and shall include the ruling of the presiding officer. Objections not made before the presiding officer may not subsequently be relied on in the proceeding.

(3) *Offer of proof.* Whenever evidence is excluded by the presiding officer, the party offering such evidence may make an offer of proof. The offer of proof shall consist of a brief statement, which shall be included in the transcript, describing the evidence excluded. If the evidence consists of a brief oral statement, it shall be included in full in the transcript. If the evidence consists of an exhibit, it shall be marked for identification and inserted in the record. In either such event, if the judicial officer decides that the presiding officer's ruling in excluding the evidence was erroneous and prejudicial, such evidence shall be considered a part of the record. If the taking of such evidence will consume a considerable length of time at the hearing, the presiding officer shall not allow the insertion of such evidence in full and, if the judicial officer decides that the presiding officer's ruling in excluding the evidence was erroneous and prejudicial, the hearing shall be reopened to permit the taking of such evidence.

(4) *Depositions and affidavits.* Except as is otherwise provided in these rules, admission of the deposition of any witness shall be subject to the provisions of rule 9, § 202.109, and affidavits, and statements under penalty of perjury as provided in 28 U.S.C. 1746, Pub. L. 94-550, may be admitted only if the evidence is otherwise admissible and no party objects.

(5) *Department records.* A true copy of any written entry in any record of the Department, made by an officer or employee thereof in the course of the official duty of such officer or employee, and relevant to the issues involved in the hearing, shall be admissible as prima facie evidence of the facts stated therein, without the production of such officer or employee.

(6) *Exhibits.* (i) For each exhibit offered by a party, copies in addition to the original shall be filed with the presiding officer for the use of all other parties to the proceeding, except where the presiding officer finds that the furnishing of copies is impracticable. The presiding officer shall tell the parties the number of copies required to be filed, make the proper distribution of the copies, and have this noted on the record.

(ii) If the testimony of a witness refers to any document, the presiding officer shall determine whether it shall be produced at the hearing and made a part of the record as an exhibit, or whether it shall be incorporated in the record by reference.

(iii) If relevant and material matter is embraced in a document containing irrelevant or immaterial matter, such irrelevant or immaterial matter shall be designated by the party offering the document in evidence, and shall be segregated and excluded, insofar as practicable.

(f) *Subpenas*—(1) *Issuance.* The attendance and testimony of witnesses and the production of documentary evidence, from any place in the United States, on behalf of any party to the proceeding, may be required by subpena at any designated place for oral hearing. Subpenas may be issued by the presiding officer, on a written application filed by a party, showing the grounds and necessity thereof, and, with respect to subpenas for the production of documentary evidence, showing their competency, relevancy, and materiality and the necessity for their production. Subpenas may be issued on the motion of the presiding officer.

(2) *Service; proof of service.* A subpena may be served by any natural person over the age of 18 years. The party at whose instance a subpena is issued shall be responsible for serving it, however, at the request of such party the Secretary will attempt to serve it. Service and proof of service shall be made in the same manner as provided in rule 5, § 202.105, except that, if the person who delivers or mails a subpena is not an employee of the Department or a U.S. Marshal or deputy of a U.S. Marshal, proof of service shall be on the affidavit of such person, or statement of such person under penalty of perjury as provided in 28 U.S.C. 1746, Pub. L. 94-550.

(g) *Oral argument.* The presiding officer shall permit oral argument by the parties or their counsel who are present at an oral hearing, but may limit such argument to any extent that the presiding officer finds necessary for the expeditious or proper disposition of the case.

(h) *Copies of transcript.* Parties to the proceeding who desire copies of the transcript of the oral hearing may make arrangements with the reporter, who will furnish and deliver such copies direct to such parties, upon receipt from such parties of payment for them, at the rate per page provided by the contract between the reporter and the Department for such reporting service.

(i) *Filing, and examiner's certificate, of the transcript.* As soon as practicable after the close of the oral hearing, the reporter shall transmit to the presiding officer the original transcript of the testimony, and as many copies of the transcript as may be required by paragraph (j) of this section for the area offices of the Agency and as may be required for the Washington office of the Agency. At the same time the reporter shall also transmit a copy of

the transcript to each party who shall have arranged and paid for it, as provided in paragraph (h) of this section. Upon receipt of the transcript, the presiding officer shall attach to the original transcript a certificate stating that, to the best of the presiding officer's knowledge and belief, the transcript is a true, correct, and complete transcript of the testimony given at the hearing and that the exhibits mentioned in it are all the exhibits received in evidence at the hearing, with such exceptions as the certificate shall specify. Such certificate shall be served on each party and a copy thereof shall be attached to each copy of the transcript received by the presiding officer. In accordance with such certificate the presiding officer shall note, on the original transcript, each correction detailed in such certificate by adding or crossing out (but without obscuring the texts as orginally transcribed) at the appropriate places any words necessary to make the text conform to the correct meaning, as certified by the presiding officer. The presiding officer shall send the copies of the transcript to the hearing clerk who shall send them to the Agency.

(j) *Keeping copies of the transcript.* During the period in which the proceeding has an active status in the Department, a copy of the transcript shall be kept at the area office of the Agency most convenient to the respondent; however, if there are two or more respondents and they are located in different regions, such copy of the transcript shall be kept at the area office of the Agency nearest to the place where the hearing was held. In addition, a copy of the transcript shall be kept at the area office of the Agency most convenient to the complainant. Any such copy shall be available for examination during official hours of business at the area office, but shall remain the property of the Department and shall not be removed from such office.

§ 202.113 Rule 13: Written hearing.

(a) *Evidence.* As used in this section, the term "evidence" shall mean depositions, affidavits, or statements under penalty of perjury as provided in 28 U.S.C. 1746, Pub. L. 94-550, of persons having knowledge of the facts, or documents properly identified by such deposition, affidavit, or statement, or otherwise authenticated in such a manner that they would be admissible in evidence at an oral hearing, except as provided hereinafter. Testimony on deposition, to the extent credible, shall be given greater weight as evidence, than such affidavits or statements. In a case in which a party, entitled to oral hearing as provided in rule 11, § 202.111, withdraws such party's request for oral hearing on condition that only depositions be used if a written hearing is held, only depositions, and documents properly identified therein, shall be made a part of the record as evidence by the parties if a written hearing is held.

(b) *Verification.* Any facts must be verified, by oath or affirmation before a person legally authorized to administer oaths or before a person designated by the Secretary for the purpose (except in the case of a statement under penalty of perjury as provided in 28 U.S.C. 1746, Pub. L. 94-550), by a person who states, in the deposition, affidavit, or statement, that such person has actual knowledge of the facts. Except under unusual circumstances, which shall be set forth in the deposition, affidavit, or statement, any such person shall be one who would appear as a witness if an oral hearing were held.

(c) *Complainant's evidence.* The complainant shall be served with notice of an opportunity to file evidence. Within 20 days after such service, the complainant may file evidence. What the complainant files in response to that notice shall be served promptly on the respondent.

(d) *Respondent's evidence.* After expiration of the time for the filing of complainant's evidence, the respondent shall be served with notice of an opportunity to file evidence. Within 20 days after such service, the respondent may file evidence. What the respondent files in response to that notice shall be served promptly on the complainant.

(e) *Complainant's rebuttal.* If the respondent files anything pursuant to paragraph (d) of this section, the complainant shall be served with notice of an opportunity to file evidence in rebuttal of what the respondent has filed. Within 10 days after such service, the complainant may file such evidence, which shall be confined strictly to rebuttal of what the respondent has filed. What the complainant files in response to that notice shall be served promptly on the respondent.

(f) *Failure to file.* Failure to file any evidence authorized under this section, within the time prescribed, shall constitute a waiver of the right to file such evidence.

(g) *Extension of time for depositions.* If any party timely files an application for an order for the taking of testimony by deposition pursuant to rule 9, § 202.109, time for the filing of such party's evidence shall be extended as reasonable, to permit consideration of the application, and taking of depositions if ordered.

(h) *Investigation report.* No provision of this rule 13 shall change the status of an investigation report served on the parties and made a part of the record pursuant to rule 4, § 202.104.

§ 202.114 Rule 14: Post-hearing procedure.

(a) *Oral hearing.* Any party present or represented at an oral hearing, desiring to file any written argument or brief, proposed findings of fact, conclusions, and order, or statement of objections to rulings made by the presiding officer, must so inform the presiding officer at the oral hearing; upon being so informed, the presiding officer shall set a reasonable time for the filing of such documents, and state it on the record at the oral hearing.

(b) *Written hearing.* After filing of the last evidence in a written hearing, notice shall be served on each party that such party may file, within 10 days after such service on such party, written argument of brief, proposed findings or fact, conclusions, and order.

(c) *Service; delay in preparation of report.* If any such document is filed by any party, it shall be served on all other parties. The report shall not be prepared before expiration of such time for filing.

§ 202.115 Rule 15: Submission for final consideration.

(a) *Report.* The presiding officer, with the assistance and collaboration of such employees of the Department as may be assigned for the purpose, shall prepare a report. The report shall be prepared on the basis of the evidence in the record, including the investigation report if one is prepared by the agency head and served on the parties, and any allegations admitted or deemed to be admitted, and any stipulations. The report shall be prepared in the form of a final order for signature by the judicial officer, and shall be filed with the hearing clerk. The report shall not be served on the parties unless and until it is signed by the judicial officer.

(b) *Record.* At the same time as the report is filed with the hearing clerk, the record shall also be filed with the hearing clerk. The record shall include: Pleadings; motions and requests filed and rulings thereon; the investigation report if one is prepared by the agency head and served on the parties; the transcript of an oral hearing, and exhibits received, if an oral hearing was held; evidence filed by the parties if a written hearing was held; documents filed in connection with prehearing conferences; any proposed findings of fact, conclusions and orders, statements of objections, and briefs; any stipulations; and proof of service.

(c) *Submission to judicial officer.* Unless the hearing clerk reasonably believes that the record is not complete and in proper order, the record and the report shall be submitted to the judicial officer for decision.

(d) *Oral argument.* There shall be no right to oral argument other than that provided in Rule 12(g), § 202.112(g).

§ 202.116 Rule 16: Issuance of order.

(a) As soon as practicable after the receipt of the record and report from the hearing clerk, the judicial officer, on the basis of and after due consideration of the record, shall issue an order in the proceeding, which shall be served on the parties.

(b) If the judicial officer deems it advisable to do so, the order may be made a tentative order. In such event, a presiding officer shall be assigned and the tentative order shall be served on each party, and each party shall have 20 days in which to file written exceptions to it, and arguments or briefs in support of such exceptions. If no party timely files exceptions, the tentative order shall automatically become the final order in the proceeding, and notice of such fact shall be served on the parties. If any party timely files such exceptions, they shall be handled in the same manner as a petition filed under rule 17, § 202.117.

§ 202.117 Rule 17: Petition to reopen a hearing; to rehear or reargue a proceeding; to reconsider an order; or to set aside a default order.

(a) *Filing of petition*—(1) *To reopen a hearing.* Any party may file a petition to reopen a hearing to take further evidence, at any time prior to the issuance of the final order, or prior to a tentative order becoming final. Such a petition must state the nature and purpose of the evidence to be offered, show that it is not merely cumulative, and state a good reason why it was not offered at the hearing if oral, or filed in the hearing if written.

(2) *To rehear or reargue a proceeding or reconsider an order.* Any party may file a petition to rehear or reargue a proceeding or reconsider an order of the judicial officer, at any time within 20 days after service on such party of such order. Such a petition must specify the matters claimed to have been erroneously decided, and the basis for the petitioner's claim that such matters were erroneously decided.

(3) *To set aside a default order.* Any respondent against whom an order is issued by the judicial officer, upon failure to file an answer as required, may file a petition to set aside such order, at any time within 20 days after service on such respondent of such order. Such a petition must state a good reason why an answer was not filed as required.

(b) *Brief or memorandum of law.* If such a petitioner wishes to file a brief or memorandum of law in support of such a petition, it must be filed with such petition.

(c) *Procedure.* A presiding officer shall be assigned upon the filing of any such petition, or upon notice to the hearing clerk (which may be written or oral, or by telephone) that any party intends to file any such petition. The party filing any such petition shall be referred to as the complainant or respondent, depending on the original designation of such party in the proceeding; such party shall have the burden of establishing that such petition should be granted. If a petition to reopen is timely filed, the order shall not be issued pending decision whether to grant or deny the petition. If a petition to rehear or reargue or reconsider, or to set aside a default order, is timely filed, operation of the order shall be stayed automatically pending decision whether to grant or deny it; if such a petition is not timely filed, operation of the order shall not be stayed unless the Judicial Officer shall determine otherwise.

(d) *Service; answer.* No such petition shall be granted unless it, with the brief or memorandum of law in support of it, if any, is first served on each party to the proceeding other than the one filing it. Each such other party, within 20 days after such service on such party, may file an answer to such petition. If any such party wishes to file a brief or memorandum of law in support of such an answer, it must be filed with such answer. Any such answer, with the brief or memorandum of law in support of it, if any, shall be served on each party to the proceeding other than the one filing it. Any such petition may be denied without such service.

(e) *Submission for decision; service of order.* The presiding officer shall prepare a recommendation with respect to the petition, and submit it to the judicial officer for decision. Such a recommendation shall be prepared in the form of a final order for signature by the judicial officer. It shall not be served on the parties unless and until it is signed by the judicial officer. The order of the judicial officer shall be served on the parties.

(f) *Practice upon decision.* If the judicial officer decides to reopen a hearing, or to rehear or permit reargument of a proceeding, or to set aside a default order, a presiding officer shall be assigned and the rules of practice shall be followed thereafter as applicable.

§ 202.118 Rule 18: Presiding officer.

(a) *Powers.* Subject to review as provided elsewhere in these rules, the presiding officer assigned to any proceeding shall have power to:

(1) Set the time and place of a prehearing conference and an oral hearing, adjourn the oral hearing from time to time, and change the time and place of oral hearing;

(2) Administer oaths and affirmations;

(3) Issue subpenas requiring the attendance and testimony of witnesses and the production of documentary evidence at an oral hearing;

(4) Summon and examine witnesses and receive evidence at an oral hearing;

(5) Take or order the taking of depositions;

(6) Admit or exclude evidence;

(7) Hear oral argument on facts or law; and

(8) Do all acts and take all measures necessary for the maintenance of order and the efficient conduct of the proceeding, including the exclusion of contumacious counsel or other persons.

(b) *Motions and requests.* The presiding officer is authorized to rule on all motions and requests filed in the proceeding prior to submission of the presiding officer's report to the judicial officer, *Provided*, That a presiding officer is not authorized to dismiss a complaint. Submission or certification of any question to the judicial officer, prior to submission of the report, shall be in the discretion of the presiding officer.

(c) *Reassignment.* For any good reason, including absence, illness, resignation, death, or inability to act, of the attorney assigned to act as a presiding officer in any proceeding under these rules, the powers and duties of such attorney in the proceeding may be assigned to any other attorney who is employed in the Office of the General Counsel of the Department, without abatement of the proceeding.

(d) *Disqualification.* No person shall be assigned to act as a presiding officer in any proceeding who (1) has any material pecuniary interest in any matter or business involved in the proceeding; (2) is related within the third degree by blood or marriage to any party to the proceeding; or (3) has any conflict of interest which might impair such person's objectivity in the proceeding. A person assigned to act as a presiding officer shall ask to be replaced, in any proceeding in which such person believes that reason exists for disqualification of such person.

(e) *Procedure on petition for disqualification.* Any party may file a petition for disqualification of the presiding officer, which shall set forth with particularity the grounds of alleged disqualification. Any such petition shall be filed with the hearing clerk, who shall immediately transmit it to the judicial officer and inform the presiding officer. The record of the proceeding also shall immediately be transmitted to the judicial officer. After such investigation or hearing as the judicial officer deems necessary, the judicial officer shall either deny the petition or direct that another presiding officer be assigned to the proceeding. The petition, and notice of the order of the judicial officer, shall be made a part of the record and served on the parties; if any record is made on such a petition, it shall be a part of the record of the proceeding.

§ 202.119 Rule 19: Fees of witnesses.

Witnesses subpenaed before the presiding officer, and witnesses whose de-

positions are taken, shall be entitled to the same fees and mileage as are paid for like services in the courts of the United States. Fees and mileage shall be paid by the party at whose instance the witness appears or the deposition is taken.

§ 202.120 Rule 20: Official notice.

Official notice shall be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical or scientific fact of established character: *Provided,* That the parties shall be given notice of matters so noticed, and shall be given adequate opportunity to show that such facts are erroneously noticed.

§ 202.121 Rule 21: Intervention.

At any time after docketing of a proceeding and before commencement of a hearing, oral or written, therein, the presiding officer may, upon petition, and for good cause shown, permit any person to intervene therein. The petition shall state with preciseness and particularity: (a) The petitioner's relationship to the matters involved in the proceeding; (b) the nature of the material the petitioner intends to present in evidence; (c) the nature of the argument the petitioner intends to make; and (d) the reasons why the petitioner should be allowed to intervene. Any such petition, and notice of the order thereon, shall be served on the parties and made a part of the record in the proceeding.

§ 202.122 Rule 22: Ex parte communications.

(a) At no stage of the proceeding between its docketing and the issuance of the final decision shall the presiding officer or judicial officer discuss ex parte the merits of the proceeding with any party, or attorney or representative of a party: *Provided,* That procedural matters shall not be included within this limitation; and *Provided further,* That the presiding officer or judicial officer may discuss the merits of the case with such a person if all parties to the proceeding or their attorneys or representatives have been served with notice and an opportunity to participate. A memorandum of any such discussion shall be included in the record.

(b) No party, or attorney or representative of a party, or other person not an employee of the Department, shall make or knowingly cause to be made to the presiding officer or judicial officer an ex parte communication relevant to the merits of the proceeding.

(c) If the presiding officer or judicial officer receives an ex parte communication in violation of this section, the one who receives the communication shall place in the public record of the proceeding: (1) Such communication if written, or a memorandum stating the substance of such communication if oral; and (2) a copy of any written response or a memorandum stating the substance of any oral response thereto.

(d) Copies of all such items placed or included in the record, as provided in this section, shall be served on all parties.

(e) For purposes of this section "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include a request for a status report on any matter or the proceeding.

§ 202.123 Rule 23: Action by Secretary.

The Secretary may act in the place and stead of a presiding officer or the judicial officer in any proceeding hereunder, or any matter in connection therewith.

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federal register

FRIDAY, JULY 14, 1978
PART VII



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Care Financing Administration

■

MEDICAID AND MEDICARE PROGRAMS

Rural Health Clinic Services

[4110-35]

Title 42—Public Health

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

MEDICAID AND MEDICARE PROGRAMS

Rural Health Clinic Services

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Final regulations.

SUMMARY: These regulations set forth requirements for the coverage and reimbursement of rural health clinic services under the medicare and medicaid programs. They implement the medicaid provisions of the Rural Health Clinic Services Act of 1977 (Pub. L. 95-210) which are effective on July 1, 1978. They also amend regulations on certification of rural health clinics and coverage and reimbursement of rural health clinic services under medicare. The intent is to increase the availability of primary and emergency care services in medically underserved rural communities by extending reimbursement for services of physician assistants and nurse practitioners who operate through the clinic setting.

EFFECTIVE DATE: July 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Joseph E. Dougherty, 202-245-8990 (Medicaid).

Lorraine Kyttle, 301-594-9748 (Certification).

Marinos Svolos, 301-594-9315 (Medicare).

SUPPLEMENTARY INFORMATION: The Rural Health Clinic Services Act of 1977 extended medicare and medicaid benefits to cover health care services furnished by clinics operating in rural areas where access to traditional physician care has been difficult. In those areas, specifically trained primary care practitioners (typically called physician assistants and nurse practitioners) furnish the health care services needed by the community.

Pub. L. 95-210 was effective for medicare on March 1, 1978. In order to meet that deadline, we published regulations for certification of rural health clinics on February 8, 1978 (43 FR 5373), and for medicare coverage and reimbursement on March 1, 1978 (43 FR 8258). Although these were final regulations, we provided opportunity for comment.

Proposed regulations for medicaid were published on March 31, 1978 (43 FR 13860).

Several changes have been made in the certification and medicare regulations and in the medicaid proposed rules. The comments on the three sets of regulations and the changes made are discussed below.

RESPONSES TO COMMENTS ON CERTIFICATION OF CLINICS

SCOPE OF COMMENTS

Sixty comments were received from 41 sources, including representatives of national, regional, and State organizations. Some expressed general satisfaction with the regulations and suggested no specific revisions. Others viewed them as reflecting concern for quality health care for rural medicare beneficiaries. Thirty comments concerned the definition of nurse practitioner. The remaining 30 dealt with the clinic's organizational structure, staffing and staff responsibilities, and the services provided by the clinic.

In response to comments and as result of further research, several revisions have been made in the regulations.

DISCUSSION OF COMMENTS AND CHANGES

1. *Definition of nurse practitioner*

One commenter recommended that nurse practitioner be further defined by adding the phrase "who holds a baccalaureate degree in nursing." Other respondents learned of that suggestion and overwhelmingly rejected it. Many of these supported the concept of greater uniformity in the programs to prepare nurse practitioners but challenged the assertion that graduation from a collegiate nursing program was a demonstrated factor related to competent and quality performance as a nurse practitioner. In the FEDERAL REGISTER dated November 29, 1977, we published guidelines for nurse practitioner programs in response to the Nurse Training Act of 1975 (Pub. L. 94-63). They provide for the "award of grants to public and nonprofit schools of nursing * * * for the training of nurse practitioners" and specify that such programs shall be open to registered nurses irrespective of the type of school of nursing in which they received their training. To foster the training of certain nurse practitioners (those not holding a baccalaureate degree in nursing) through federally assisted programs under Pub. L. 94-63, and then to deny reimbursement for the services of nurse practitioner graduates would be inconsistent.

The requirement of a baccalaureate degree in nursing has not been added to the definition of nurse practitioner.

2. *Definitions of physician and physician assistant*

Several commenters suggested that the definition of physician include the requirement for certification by the appropriate professional organization as a primary care physician. Section 1861(r) of the Social Security Act defines the term physician for medicare purposes generally, including for rural health clinic services. Since this definition does not refer to particular physician specialties we have not made the requested change.

One commenter suggested that the definition of physician assistant would be more technically correct if the words "to assist primary care physicians" were deleted from § 481.2(d)(1) dealing with certification by the National Commission on Certification of Physician Assistants (NCCPA).

The purpose of the phrase "to assist primary care physicians" is merely to describe the nature of the NCCPA certification as we understand it. It does not impose any requirements regarding the nature of a physician assistant's current responsibilities. We believe this phrase is technically correct and helps in understanding the purpose of the certification.

3. *Organizational structure, staffing, and staff responsibilities*

Although several commenters agreed with the basic requirement that the clinic be under the medical direction of a physician (§ 481.7), a larger number took issue with the portion of § 481.8(b) that requires the physician to provide medical supervision of the health care staff. Their concern was that this provision places a registered nurse under the direct supervision of the physician. The direction and supervision that are part of the physician member's responsibility pertain to the performance of medical tasks by the nurse practitioner or physician assistant. The physician is not required to supervise those acts of care that a registered nurse is licensed to perform independently. We believe these statements reflect the intent of the law and can be applied in a reasonable manner consistent with State law.

The suggestion was made that we require clinics to have both nurse practitioners and physician assistants on its staff. The law defines a rural health clinic as a facility that employs a physician assistant or a nurse practitioner. Since the statutory definition clearly allows either a nurse practitioner or a physician assistant, the suggestion was not accepted.

One commenter expressed concern over the provision (§ 481.8(a)(3)) that the physician assistant or nurse practitioner member of the clinic's staff may be the owner of the clinic. The concern was that to permit a member of the clinic's staff who is subject to the medical direction of a third party to be the owner could result in a conflict of interest and might undermine the quality of care. There is no prohibition

in Pub. L. 95-210 against ownership of a rural health clinic by a physician assistant or nurse practitioner member of the staff or any other person. We believe it would be discriminatory and unreasonably restrictive to use ownership as the basis for denying certification to a clinic that meets all the requirements.

4. *Services provided by the clinic*

Several commenters suggested specifying (in § 481.9) that services must be provided in compliance with Federal and State law. The section has been revised to specify compliance with Federal, State, and local laws.

One commenter suggested that the regulation specify whether the listed laboratory services are a required minimum or the maximum allowed. The listed services are not the maximum allowed. If a rural health clinic has qualified staff to provide additional, more specialized diagnostic and laboratory services, it may provide them, consistent with State and local law. For this reason, the listings begin with the terms "These include" and "including." To the extent that the listed services can be provided under State and local law, they are the minimum. If any of these laboratory services cannot be provided at the clinic under State or local law, that laboratory service is not required for certification.

Another commenter recommended several deletions from, and restrictions to, the laboratory services described in § 481.9(c)(2), on the basis that the training and experience available to most physician assistants and nurse practitioners would not qualify them to perform and properly analyze the results of the tests. We believe the listed laboratory services are essential for the immediate diagnosis and treatment of the patient, and are frequently and widely available in private offices or clinics as an integral part of primary care practice. Such services may be furnished in these settings by trained personnel below the level of technologist. The stated legislative intent was that a rural health clinic's laboratory "Shall be treated as a physician's office for the purpose of licensure and meeting any health and safety standards." (See House Report 95-790, 95th Congress, 1st session 11 (1977).) We believe the scope of laboratory services described is consistent with that intent.

The following changes have been made in response to other comments:

Section 481.9(c)(2)(iv), Blood sugar: the reference to "stick or tablet method is acceptable" is deleted;

Section 481.9(c)(2)(vi), Examination of stool specimens for occult blood: the reference to "pinworm" is deleted;

Section 481.9(c)(2)(ix), "Test for pinworm" is added.

In addition to the above changes, the regulations have been revised as follows:

1. Section 481.2, definitions, has been revised to more clearly identify the type of formal educational program covered by the "grandfather" clauses in §§ 481.2(b)(3) and 481.2(d)(3). These sections were intended to apply only to formal educational programs that specifically prepare nurse practitioners and physician assistants.

2. Section 481.8, staffing and staff responsibilities, has been revised to incorporate in the regulations a condition that more clearly reflects the legislative intent of Pub. L. 95-210: to extend medicare and medicaid coverage for medical services furnished by qualified nurse practitioners and physician assistants. We have added a new paragraph (a)(6) to read as follows:

> A physician, nurse practitioner or physician assistant is available to furnish patient care services at all times the clinic operates. A nurse practitioner or physician assistant is available to furnish patient care services at least 60 percent of the time the clinic operates.

This clarification will assure that rural health clinics will make substantial use of the services of nurse practitioners and physician assistants. If there is no need for the services of nurse practitioners and physician assistants, participation as a rural health clinic would not be appropriate. See House Report 95-548, 95th Congress, 1st session 2, 3 (1977) and Senate Report 95-425, 95th Congress, 1st session 4 (1977).

3. Section 481.9, provision of services has been revised to delete the requirements that the clinic provide services to "persons of all ages." This requirement is not contained in the Rural Health Clinic Services Act. Deletion of the requirement has the effect of extending participation in the rural health clinic program to clinics that provide comprehensive health care to specific age groups. However, the revision does not alter the requirement that clinics provide a broad range of diagnostic and treatment services for a variety of health conditions. Thus, the revision does not extend coverage to clinics providing only a specialized service, such as family planning or cancer screening.

4. Section 481.10, patient health records, has been revised in two places. In § 481.10(a)(3)(i) the reference to a "discharge summary," has been replaced by the words "a brief summary of the episode, disposition, and instructions to the patient," (which more properly applies to an outpatient setting). § 481.10(c) has been revised to require that patient health records be retained for at least 6 years rather than 5. This change brings the retention period into conformity with the Federal statute of limitations governing civil sanctions.

Responses to Comments on Medicare Coverage and Reimbursement of Rural Health Clinic Services

SCOPE OF COMMENTS

Written comments were received from three national organizations and several individuals. Most responses were provided orally, either by telephone or in meetings convened to discuss the regulations. We have carefully evaluated all comments and concluded that only a minor change in the medicare regulations is required to conform them to the changes made in the certification regulations.

The comments and our responses are discussed in detail below. They are divided into three groups—general comments, not related to any specific section of the regulation; comments on the coverage portion of the regulations; and comments on the reimbursement portion of the regulations.

GENERAL COMMENTS

1. *Waiver of notice of proposed rulemaking*

Several commenters objected to the waiver of notice of proposed rulemaking.

Our decision to waive was based on three factors. First, the medicare provisions of the Rural Health Clinic Services Act required medicare coverage beginning March 1, 1978. Second, the legislative history of Pub. L. 95-210 reflected a congressional concern that medicare reimbursement be available without delay to Appalachian clinics that were facing severe financial problems. (H. Rep. No. 95-548, 95th Cong., 1st sess. 4 (1977); S. Rep. No. 95-425, 95th Cong. 1st sess. 2 (1977).) Third, we wished the services reimbursable under the act to be available to program beneficiaries as soon as possible.

Since the law was not enacted until December 13, 1977, it would not have been possible to have regulations in place by March 1, 1978, and also publish a notice of proposed rulemaking with a minimum 30-day comment period.

We believe it was in the public interest to implement this new benefit on March 1, 1978. It would have been unwise to embark on the new program without at least a core of regulations authorizing actions that must be taken after March 1, 1978. Moreover, some of those actions could not be undertaken until final regulations were published.

We do desire the benefits of public participation to the fullest extent practicable under the circumstances. Accordingly, we did provide opportunity for comment and have carefully considered all responses.

We are committed to adopting new reimbursement regulations. Our goal is to publish a notice of proposed rule-

making by October 1978. We encourage additional suggestions in this area, particularly as to the basis of payment, the method for determining payment, and feasible incentives for efficient, cost-effective operations.

2. *Intent of the statute*

Several commenters took issue with the preamble summary which spoke of using nurse practitioners where there is a scarcity of physicians. This section was intended to reflect the purposes of the legislation as stated in the reports of the various congressional committees which worked on the legislation. The material in this section was drawn directly from these reports.

3. *Services furnished in skilled nursing facilities*

One commenter suggested that nurse practitioners be reimbursed for services furnished in skilled nursing facilities (SNF's) regardless of whether they are located in urban or rural areas, possibly by requiring SNF's to establish salaried positions for these practitioners. Such a provision would go beyond what is permitted by the statute. However, where nurse practitioners or physician assistants employed by rural health clinics are permitted under applicable State law to furnish services to clinic patients who are SNF or hospital inpatients, such services are covered as rural health clinic services under the regulations.

4. *Coordination with existing medicare requirements for providers*

Another commenter suggested that permitting nurse practitioners and physician assistants to furnish services to clinic patients who are inpatients of hospitals or SNF's would violate existing regulations dealing with certification of the medical necessity of provider stays which the law requires be performed by physicians. There is no conflict. These regulations only provide that those services which may be furnished by the nurse practitioner or physician assistant to such inpatients will be reimbursed.

5. *Training for rural health clinics staff*

One commenter suggested that the Medicare Bureau train rural health clinics staffs on coverage and reimbursement of services under medicare. Since the inception of the medicare program, the Department has, through its regional offices, intermediaries, and carriers, furnished technical assistance to any provider or supplier of services who might require assistance in obtaining medicare reimbursement for services covered under medicare. We are making the same assistance available to rural health clinics. A manual being developed for use by clinics will provide answers to most questions which may arise.

COMMENTS ON COVERAGE PROVISIONS

1. *Distinction between nurse practitioners and physician assistants*

Several commenters suggested that distinctions be made between nurse practitioners and physician assistants with respect to: (1) Physician supervision requirement; and (2) the establishment of a plan of treatment for visiting nurse services. The first suggestion was to provide that physician assistant services be furnished "under the supervision" of a physician, while nurse practitioner services be furnished "in consultation with" a physician. The second suggestion was to bar the physician extender from establishing a treatment plan for visiting nurse services. The law does not make such distinctions. It treats nurse practitioners and physician assistants alike in these two areas. For example, section 1861(aa)(1)(C)(ii) specifically provides that the plan of treatment for visiting nurse services may be established by a nurse practitioner or a physician assistant.

2. *Amend definition of visiting nurse services*

Several commenters suggested deleting the word "medical" from § 405.2401(b)(19), the definition of visiting nurse services. This would be contrary to section 1861(aa)(1) of the law, which defines visiting nurse services as "* * * part-time or intermittent nursing care and related *medical* supplies * * *." [Emphasis added.]

3. *Qualifications of nurse-midwives*

It was suggested that the qualifications for nurse-midwives be modified by:

(a) Deleting the time specified for academic training (1 year) and classroom instruction (4 months); and

(b) Eliminating the "grandfather" provision that would qualify nurse-midwives who had been practicing during 12 of the 18 months preceding the effective date of the certification regulations (February 8, 1978). The purpose of the first suggested change would be greater flexibility: A nurse-midwife might qualify on the basis of shorter academic training. On the other hand, it was feared that a nurse-midwife who did not have adequate training might qualify under the "grandfather" clause.

The qualifications for nurse-midwives parallel those for nurse practitioners. We can find no justification for setting lower standards of formal academic training for nurse-midwives than for other practitioners who provide general or specialized primary care services.

The "grandfather" clause applies to nurse-midwives as it applies to nurse practitioners and physician assistants. Our intention is to make the requirements for specialized nurse practitioners consistent with those for nurse practitioners and physician assistants whose presence on the staff of a clinic satisfies a requirement for certification. In the limited cases in which this "grandfather" clause applies, a nurse-widwife may substitute practice experience for some formal education. The type of formal educational programs referred to by the "grandfather" clauses for nurse-midwives and specialized nurse practitioners have been clarified to apply only to those programs which specifically prepare nurse-midwives and specialized nurse practitioners.

COMMENTS ON REIMBURSEMENT PROVISIONS

1. *Determination of beneficiary liability*

One commenter suggested that the all-inclusive rate might be inequitable, that a medicare beneficiary's coinsurance liability might be higher for services furnished by a clinic with high costs than it would be for identical services received from a clinic with lower costs, or from some other source.

Section 405.2410 of the regulation requires that the beneficiary's coinsurance liability not exceed 20 percent of the clinic's reasonable customary charge for a service. The all-inclusive rate does not affect the amount of coinsurance.

2. *Review and adjustment of all-inclusive rate*

One commenter was concerned that frequent rate adjustments might create difficulties for program planning and budgeting. It was suggested that rates not be changed during the reporting year unless a very substantial change in clinic costs occurs. It was also suggested that the review of a clinic's rate not be made more than every 3 months to avoid potential harassment.

Periodic rate review determines whether a change in the current rate of payment is required to reflect significant variations (in the cost or the volume of services furnished by the clinic) from the estimates made when the rate was determined. Without periodic rate adjustment, there is risk of a large overpayment or underpayment. We believe that most clinics would prefer any such surplus or deficiency in payment to be made up by rate adjustment during the reporting period rather than by lump sum correction at the end of the period.

Although the frequency of review will be determined by the intermediary, we expect that they would not usually be required more frequently than quarterly.

3. *Establishment of a "floor rate"*

One commenter suggested that a "floor rate" be established as a mini-

mum all-inclusive rate and that a clinic with a per-visit cost at or below this rate be required to report costs only on an annual basis. We do not have sufficient data at this time to evaluate or implement such an approach. However, we will consider using a "floor rate" in this manner in developing the prospective reimbursement system.

4. *Accrual basis of accounting*

One commenter objected to the requirement (§ 405.2429(a)(3)) that financial records be maintained on the accrual basis of accounting. It was suggested that clinics be permitted to choose between accrual and cash basis accounting systems.

The regulation applies only to the way a clinic reports its costs for purposes of medicare (and medicaid) reimbursement. It does not dictate how a clinic must maintain its internal accounting system. Therefore, a clinic may maintain its accounting system on a cash basis, if it so chooses. The accrual basis of accounting is required to assure that all clinic costs are recognized in the appropriate reporting period.

We do not believe this requirement will be unduly burdensome for rural health clinics that maintain cash basis records. In most instances, these clinics will need only to adjust a relatively few items at the end of the reporting period. That adjustment need not become a part of the clinic's formal accounting records, but may be maintained in supplementary records.

5. *Reimbursement of provider clinics*

Section 405.2425 of the medicare regulations distinguishes between provider clinics (those that are part of a hospital, skilled nursing facility, or a home health agency) and those that are independent of such institutions. One commenter questioned the desirability of different methods of reimbursement for these two types of clinics.

A clinic that is an integral part of an institution is reimbursed with other departments and components of that institution, in accordance with the rules applicable to providers generally. It is more efficient, both from the stand point of the intermediary and the provider, if the provider clinic is paid by the provider's medicare intermediary under the same cost reporting and payment mechanisms used for other components of the institution. This promotes consistency and rationality in the reimbursement system by treating all components of the provider under the same rules. In addition, independent rural health clinics will be paid by a regional intermediary, which does not service all providers in its region. These other providers are serviced by different intermediaries. To require all provider rural health clinics in the region to be paid through the regional intermediary would unnecessarily complicate the reimbursement process.

6. *Future reimbursement method*

Section 405.2425(b)(4) of the medicare regulations specifies that the present payment method for independent clinics will be replaced by a prospective payment system effective for reporting periods beginning after March 1, 1980, at the latest. One comment suggested that we might not have sufficient data or time to devise and test the prospective payment system by the March 1979 time goal stated in the preamble.

We have received applications from over 650 facilities interested in being certified as rural health clinics. We, therefore, believe that we will have sufficient data to develop a prospective reimbursement system and implement it by March 1, 1979. We intend the method to be flexible enough to accommodate changes as later data become available.

7. *Tests of reasonableness for rural health clinic costs and utilization*

Section 405.2428 authorizes screening guidelines to test the reasonableness of rural health clinic costs and a payment limit.

One commenter suggested that separate compensation and productivity guidelines be established for nurse practitioners and physician assistants. The statute makes no distinction between the covered services of these two types of practitioners. Furthermore, although data are available for these personnel in the aggregate, there is none to support the establishment of separate compensation and productivity guidelines at present. If experience with rural health clinic reimbursement demonstrates widespread and significant differences in compensation and productivity of these personnel, we will consider developing separate guidelines for each.

A number of commenters suggested that HCFA provide advance notice of the tests of reasonableness to be used for clinic reimbursement. We agree and intend to publish a FEDERAL REGISTER notice formally announcing the screening guidelines and the payment limit for reimbursement of independent rural health clinics. These tests are currently available to any clinic through the regional intermediary that services its area. Additional notices will be published if the tests of reasonableness are revised.

RESPONSES TO COMMENTS RECEIVED ON MEDICAID COVERAGE AND REIMBURSEMENT

SCOPE OF COMMENTS

Written comments were received from 12 State health or welfare agencies, 3 national health organizations, 2 health systems agencies, 2 legal organizations, 1 home health agency, 1 doctor, and 1 State comptroller.

Many comments requested clarification or further explanation rather than regulatory changes. Some, though addressed to the Medicaid Bureau, actually involved policy contained in final rules on certification of rural health clinics or on reimbursement under medicare. If a question or comment of this type has been fully discussed in the preceding sections, we do not discuss it here, unless it is necessary to explain the interrelationship of the two programs.

COVERAGE PROVISIONS

General comments.

1. *Urban clinics.* One commenter took issue with the idea that the Federal Government supported nurse practitioner services in a rural setting but not in an urban setting.

States have always had the option, in accordance with their own laws, to reimburse for nurse practitioner services under medicaid. (See 42 CFR 449.10(h) (6) and (9), which contain no restriction as to geographic location). However, the Rural Health Clinic Services Act mandates coverage of nurse practitioner services as rural health clinic services only in rural areas. Therefore, we have no authority to mandate payments to these practitioners outside the rural areas.

2. *References to medicare regulations.* One commenter suggested that the medicare regulations which apply to medicaid be repeated rather than incorporated by reference.

We believe that repetition is unnecessary. There are already many other medicare regulations incorporated by reference. The interrelationship of the two programs is such that interested parties must be thoroughly familiar with the medicare regulations and their applicability to medicaid. The Health Care Financing Administration will publish a pamphlet that will contain all regulations for rural health clinics.

3. *Provider agreements and maintenance of records.* One comment noted that there was no discussion of provider agreements or maintenance of records. Current regulations at 42 CFR 450.21 require that: (1) The State have agreements with all providers, and (2) the provider agree to maintain both medical and financial records. More specific records maintenance requirements are set forth in the certification regulations and in the medicare reimbursement regulations. Regulations at 42 CFR 481.10 establish requirements for maintenance of health records. Maintenance of financial records is addressed in 42 CFR 405.2429.

These requirements apply to medicaid rural health clinic participants, as

well as medicare and have been incorporated by reference in the medicaid rural health clinic regulations.

4. *Most appropriate site for services.* One commenter suggested that we issue policies to insure that rural health clinic services are performed at the most appropriate site, so as not to create incentives or disincentives for offsite visits. We feel that such guidelines are unnecessary. The appropriateness of the site at which a service is performed best remains a matter of professional judgment.

Specific comments

1. *State law regarding nurse practitioners and physician assistants.* Several commenters requested clarification of instances where State law is silent or vague on the practice of nurse practitioners and physician assistants. This aspect of the rule was questioned because of the use of the word "permitted" in the proposed version of §449.10(b)(2)(ii) which mandates rural health clinic services as a State plan requirement subject to State law.

For clarification purposes, we have changed the language of 42 CFR 449.10(b)(2)(ii) to read as follows: "If nurse practitioners or physician assistants (as defined in 481.1 of this chapter) are not prohibited under State law from furnishing primary health care, * * *"

We do not view this modification as a change in policy. Our position has always been, as first conveyed through the preamble outlining certification requirements, that where State law is silent or vague on this issue, a rural health clinic would be certified in the absence of any "explicit prohibition" against practice by nurse practitioners or physician assistants (see 43 FR 5374 dated Fedruary 8, 1978). If State law does not preclude the certification of rural health clinics, the State must include rural health clinic services in its title XIX plan even though no such clinics have as yet been certified or even applied for certification.

2. *The medicaid effective date.* One commenter recommended that we not consider a State out of compliance until after the first full session of the State legislature following publication of the proposed rule in situations where a State needs legislation in order to amend its State's plan.

The time limit of "first calendar quarter after the close of the first regular session of the State legislature that began after the date of enactment of the act" is specified for these cases in the Rural Health Clinic Services Act. We do not feel that we can administratively delay the effective date specified in the act, and therefore, have not revised the regulation.

3. *Definitions.* Several comments suggested that we add definitions of "primary health care," "direct, personal supervision"; "commonly furnished"; "commonly rendered"; "health care staff"; "which cannot be self-administered"; and "incidental though integral." All except the first appear in §§ 405.2413 and 405.2415 of the medicare regulations. They have been incorporated by reference to clarify medicaid coverage of "services and supplies that are furnished as an incident to professional services" under §§ 449.10(b)(2)(ii)(C). Medicare will be issuing a manual containing comprehensive instructions for independent rural health clinics. Examples of "incident to" services and situations that will help to clarify these terms will appear in the general instructions section of this manual.

With respect to the term "primary health care," our decision to leave it undefined was more difficult. If we define the term, in detail, we run the risk that a question of compliance with the definition will arise whenever the State's medical practice laws limit the activities of nurse practitioners and physician assistants in ways that appear to restrict their delivery of primary health care. We believe that persons working in the health field understand the term. Therefore, we do not anticipate serious disagreement as to whether a rural health clinic is furnishing primary health care.

4. *Certification of clinics.* Several commenters questioned the automatic certification of a clinic for medicaid if a clinic is certified for medicare.

The law specifies that a clinic certified for medicare is eligible for participation in medicaid. However, medicaid participation is not automatic based on a medicare certification, since the clinic must sign a medicaid provider agreement. However, the State may not impose additional conditions solely directed at rural health clinics. Of course, a clinic may choose not to participate in either medicare and medicaid.

If a clinic chooses to apply for certification to particpate only under the medicaid program, the clinic will be surveyed by the same State health survey agency which would certify for medicare and under the same criteria.

A commenter questioned the need to certify a clinic if the medicaid population in an area was adequately served by physicians even if the entire population was underserved. While it is difficult for us to imagine such a situation, we cannot change the regulation because the statute defines underserved areas only in terms of the adequacy of medical care for the entire population of an area.

5. *Home health agency shortage areas.* One commenter complained that the less restrictive criteria for the delivery of visiting nurse services in the home health agency shortage areas may discourage the development of home health agenices. The less restrictive requirements for visiting nurse services provided through a rural health clinic are based on the new law. The intent of the less restrictive requirements is to bring such services to medically underserved populations.

6. *Visiting nurse care.* One commenter suggested that regulations allowing physician assistants or nurse practitioners to establish plans of nursing care conflicted with existing regulations governing intermediate care facilities that require plans of nursing care to be established by a physician.

A physician assistant or nurse practitioner can establish a plan for visiting nurse care for a patient in an ICF; however, this is quite different from plan of care requirements provided within the ICF and can only be in addition to, and not in lieu of, the physician's plan of care requirements.

ICFs are not excluded from the definition of "place of residence" for a homebound individual who may receive visiting nurse services under §449.10(b)(2)(ii). This was done for consistency with provisions for home health services, which are similar and can be provided in an ICF. However, it seems unlikely that visiting nurse care would be required in an ICF.

7. *"Rural health clinic services" and "any other ambulatory services."* The category "any other ambulatory services furnished by a rural health clinic," which appeared in the proposed rule as part of the definition for coverage under rural health clinic services in §449.10(b)(2)(ii), has been given separate coverage under §449.10(b)(2)(iii) in the final rule. We have made this change and several other minor changes to this section of the regulation for the purpose of establishing a uniform definition of "rural health clinic services" under both medicaid and medicare. As the definition of rural health clinic services now reads, the types of services are the same for both medicaid and medicare. However, the common definition in no way affects the different coverage requirements under medicaid. For example, a routine physical would be covered as a rural health clinic service under medicaid, but not under medicare.

One commenter has asked that we clarify what a State must cover under the category of "Any other ambulatory services." We are interpreting "Any other ambulatory services * * * otherwise included in a State plan" to mean those services which are separate and distinct items of coverage in a State plan.

For instance, if a State plan elects the option of covering durable medical equipment and prosthetic devices

under § 449.10(b)(12), the medicaid agency must reimburse for these items if they are furnished by a rural health clinic as "other ambulatory services."

However, if the clinic furnishes these items in a State that does not cover these services as a separate and distinct item of coverage, the State is not obligated to pay.

Comments also evidenced much concern as to how early periodic screening diagnosis and treatment services would be treated.

EPSDT services that are provided by the clinic's physician, nurse practitioner; physician assistants and other health professionals who might provide "incident to" services will be considered as rural health clinic services. Other EPSDT services such as services provided by a dentist or an optometrist, would necessarily fall into the category of "other services."

Although EPSDT is considered part of rural health clinic services, the clinic would be required to meet any supervision or other requirements imposed by the State title XIX plan for EPSDT that are generally applicable wherever these services are furnished.

8. *Clinic services versus rural health clinic services.* Several commenters indicated their concern about the relationship between clinic services (an optional category under 42 CFR 449.10(b)(9)) and rural health clinic services. Specifically, one commenter suggested that States be given the option to continue operating their clinics in those medically underserved rural areas as they always have been operated, with reimbursement based on present reimbursement practices.

We cannot exempt States from a statutory requirement that the plan include rural health clinic services for the categorically needy in States where nurse practitioners and physician assistants are not prohibited. Therefore, there is no option for the State. However, if a clinic does not seek certification as a rural health clinic (even though eligible), and wishes to continue as a provider under the "clinic services" category it may do so. The State must still include rural health clinic services in the State title XIX plan and cover any certified rural health clinic that seeks this provider coverage.

9. *Rural health clinic physician services.* Clarification was requested on the definition of physician services in a rural health clinic. States must include coverage of physician services as in 449.10(b)(5) and, to the extent otherwise included in the State plan, must include coverage of the services of other practitioners mentioned in section 1861(r) of the act, which defines a physician for medicare purposes. For example, if services of a podiatrist are included in the plan, apart from rural health clinic coverage, the State must include podiatrist services as part of rural health clinic services.

REIMBURSEMENT PROVISIONS

Reimbursement methodology for independent rural health clinics

1. The NPRM specified that rural health clinic services which are covered under medicare, or are similar to medicare services reimbursed by a State under medicaid, must be paid on the same basis as medicare using the rates calculated by medicare intermediaries. The proposed rule gave States a number of alternatives for reimbursing for six specified services which are not covered by medicare.

The following proposals were received:

1. All services must be reimbursed on a fee for service basis.

2. States should be free to determine reasonable costs and develop any methodology which they feel appropriate.

3. All services except for dental services must be paid on an all inclusive rate. A separate all inclusive rate must be established for dental services.

4. "Medicare-like" services must be paid at the medicare rate and all other services must be paid on a cost basis.

In addition a commenter questioned whether the six identified medicaid services is an exhaustive listing of nonmedicare services.

We have carefully considered these comments and proposals and have amended the regulation to differentiate between rural health clinic services and other ambulatory health services furnished by a rural health clinic. Rural health clinic services must be paid using the same methodology required for medicare, but a State is given a number of alternatives with respect to other ambulatory services.

These alternatives are: (1) Pay for these services using the reimbursement practice utilized in other settings under the State plan; (2) calculate an all inclusive encounter rate including both rural health clinic services and other ambulatory health services; or (3) calculate a separate all inclusive rate for dental services and pay for the remaining ambulatory health services under either of the first two reimbursement methods. This approach eliminates the listing of the six specified "medicaid-only services" in the NPRM.

We believe this approach maximizes the possible coordination between medicare and medicaid reimbursement practices, while recognizing that States include under medicaid a variety of services not covered by medicare.

We chose not to use the proposals listed 1 and 2 above because in our view they do not comply with the statutory requirement that medicaid reimbursement follow the reimbursement regulations established by HEW for medicare for like services. (See § 2(c) of Pub. L. 95-210; § 1902(a)(13)(F) of the Social Security Act.) Proposals 3 and 4 would have taken one of the options we are offering States and mandated a single policy. They were not accepted because they unnecessarily restricted State choices with respect to other ambulatory services.

Several other comments were received raising concerns about the proposed methodology. One commenter was concerned because rural health clinics could be paid at a higher rate than private practitioners, which will cause private practitioners to drop out of the program. Although it is true that in some cases a clinic may be reimbursed at a higher rate, this result was clearly intended by the Congress. Further, we do not believe the rates to be paid using the medicare methodology are excessive.

Our commenter indicated that all of the methods of reimbursement rely on the medicare rate for rural health clinic services and, therefore, they may reflect inadequate levels of reimbursement. He also stated that there is an erroneous assumption that the medicare rate will reflect the cost of similar nonmedicare services.

We believe the rate calculated by medicare for rural health clinic services will adequately compensate a clinic for the services provided by physicians, physician assistants, nurse practitioners, and the staff that supports these professionals. Reasonable costs of related support services will also be included in the cost rate. States are free to identify other ambulatory health services not covered by medicare for additional reimbursement.

Finally, a concern was expressed that the reimbursement methodology should control costs by encouraging efficient operations and should therefore set a ceiling on reimbursement rates at no more than the 75th percentile of the prevailing rates in the areas for comparable services outside the rural health clinic.

As previously indicated, we have set limits and screens under the medicare methodology which we believe are sufficient to discourage inefficient operations. However, we certainly welcome ideas on how the methodology can be changed in the coming years.

2. *Reimbursement of provider clinics.* Several commenters suggested that the regulations were not clear in this area because the regulations provide that "provider" clinics be reimbursed on the basis of a fixed rate per visit as under medicare. They recommend that the language be changed to show that in such cases, reimbursement is not made at a fixed rate per visit.

The regulations are revised to show that "provider" clinics will be reimbursed for costs in accordance with the cost principles and limitations specified in 42 CFR part 405, subpart D. Where a State does not reimburse "provider" clinics in accordance with these cost principles, it will be necessary for the clinic to maintain the medicaid data necessary for cost apportionment purposes.

One commenter also noted that the regulations provide different reimbursement for "provider" and "independent" clinics; provider clinics at a cost rate per visit based upon subpart D and independent clinics on a cost rate per visit under § 405.2426. Consequently, provider clinics will be reimbursed at a more favorable rate that approximates actual costs, while independent clinics will be subject to payment limitations and reimbursement on a fee-for-service basis that will produce payment at less than costs. It was suggested that one method, based on cost, with identical tests of reasonableness, should be applied for both.

There is distinction between reimbursement methods to the extent that independent clinics are subject to specific limitations in determining reasonable costs. "Provider" clinics are also subject to limitations on what constitutes reasonable cost determinations, as provided for under subpart D, but not to the specific limitations for independent clinics. As discussed in the medicare preamble, this distinction promotes rationality and convenience in the reimbursement process.

A commenter stated that the different payment mechanisms for provider based and independent clinics could encourage the development of one type over another. The mechanism should support rural hospital development of rural health clinics and also the development of rural health clinics with alternative organizational frameworks.

We recognize there is a potential for payment variance. However, for the reasons stated above, we have retained the distinction. We don't believe that this distinction will have a significant impact on organizational structures of clinics, since this payment methodology will only be used for approximately 2 years.

3. *Relationship between State agency and medicare carrier.* One commenter indicated that there is a need for a direct and concise statement of the relationship among medicare, medicaid, and the carriers, regarding coordination and disclosure of information.

The medicaid procedures regarding coordination and disclosure of information will be treated in subsequent guideline material, rather than being included in the regulations.

One commenter noted that there are some legal questions about the sharing of financial information (medicare rates and report data) under the Privacy Act, now being addressed by a U.S. district court.

Since this regulations package does not deal with release of information to the public generally, these issues are not raised.

Another commenter noted that the regulations do not provide for the State to have any audit authority over the intermediary's rates, even though the State is responsible for spending Federal and State funds. It was suggested that this conflicts with one State's law which requires that such expenditures be audited by the Comptroller of the Treasury. Also, a question was raised whether States would have to pay the intermediary for administrative costs.

State agencies will be allowed to review the actions of medicare carriers' determination of interim reimbursement rates and final cost rates. The Health Care Financing Administration will attempt to resolve differences of view that may arise. The State will not be asked to pay for the administrative costs incurred in determining the interim or final cost rates by the medicare carrier.

A commenter noted that there is no provision in medicare or medicaid regulations for the involvement of the medicaid agency in the cost settlement process. It was also suggested that either the medicare or medicaid regulations should provide for recordkeeping to determine validity of medicaid payments.

Where cost is the basis of medicaid reimbursement, the medicaid agency or its fiscal agent will make interim payments at the rate established for it by the medicare carrier. The medicare carrier will also determine the final cost rate, after which the medicaid agency or its fiscal agent will make a cost settlement with the clinic for underpayments or overpayments. The medicaid regulations now specifically provide for recordkeeping by reference to 42 CFR 405.2429.

One commenter indicated that the regulations state that the cost rates are established by the medicare intermediary and assumes that the State agency may not make other arrangements for the calculation of the cost rate. Therefore, the regulations should be modified to state that all administrative costs to the program incurred by the intermediary be matched at 100 percent and the State agency be held harmless from any audit exceptions or compliance issues resulting from errors or negligence by the intermediary in determining the rate and the yearend settlement.

The cost per visit rates will be established by the medicare carrier for independent clinics and allowable costs for provider clinics by the medicare intermediary that serves the provider. As stated previously, the State will not be assessed any charge for the rate calculation or final cost determination. Any adjustments to the rates determined by the medicare intermediary or carrier will also apply to medicaid and reimbursement from the State to clinics must be adjusted accordingly.

To the extent that Federal audits result in determinations that clinics were improperly paid we would expect a State to make appropriate adjustments. We do not foresee action by a medicare carrier raising any issues of compliance between a State agency and this Department.

A question was raised concerning calculation of payment rates for rural health clinics which choose to participate in medicaid but not in medicare. Since they are familiar with the rate-setting process and the determination of reasonable costs under part 405, subpart D of Federal regulations, medicare carriers will also determine cost rates and reasonable costs to be paid by medicaid for these clinics.

The regulations have also been revised to provide a definition of "visit" for situations in which a State elects to reimburse for other ambulatory services on the basis of a rate per visit. It is necessary to make this distinction from the medicare definition in 42 CFR 405.2401, in order to accommodate services provided by professionals whose services are reimbursed under State title XIX plans but not by medicare.

Also, States which choose to reimburse for other ambulatory services on a rate per visit basis must advise the medicare carrier of this choice and require the rural health clinic to provide data necessary for the carrier to determine the appropriate cost per visit rate for all medicaid services.

42 CFR Chapter IV is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

1. In § 405.2401(b), the definitions of "nurse-midwife" and "specialized nurse-practitioner" are revised to read as follows:

§ 405.2401 Scope and definitions.

* * * * *

(b) Definitions. * * *

(10) "Nurse-midwife" means a registered professional nurse who is currently licensed to practice in the State, who meets applicable State requirements governing nurse midwives, and who meets one of the following conditions:

(i) Is currently certified as a nurse midwife by the American College of Nurse Midwives; or

(ii) Has satisfactorily completed a formal educational program (of at least one academic year) that:

(A) Prepares registered nurses to furnish gynecological and obstetrical care to women during pregnancy, delivery, and the post partal period, and care to normal newborns;

(B) Upon completion qualifies the nurse to take the certification examination offered by the American College of Nurse Midwives;

(C) Includes at least 4 months (in the aggregate) of classroom instruction and a component of supervised clinical practice; and

(D) Awards a degree, diploma, or certificate to persons who successfully complete the program; or

(iii) Has successfully completed a formal educational program (for preparing registered nurses to furnish gynecological and obstetrical care to women during pregnancy, delivery, and the post partal period, and care to normal newborns) that does not meet the requirements of paragraph (b)(10)(ii) of this section, and has been practicing as a nurse midwife for a total of 12 months during the 18-month period immediately preceding the effective date of the regulations governing certification of rural health clinics (February 8, 1978).

* * * * *

(17) "Specialized nurse-practitioner" means a registered professional nurse who is currently licensed to practice in the State, who meets the State's requirements governing the qualifications of nurse practitioners, and who meets one of the following conditions:

(i) Is currently certified as a nurse practitioner by the American Nurses' Association to perform specialized primary health care services; or

(ii) Has satisfactorily completed a formal educational program (of at least one academic year) that:

(A) Prepares registered nurses to perform an expanded role in the delivery of specialized primary health care services;

(B) Includes at least 4 months (in the aggregate) of classroom instruction and a component of supervised clinical practice; and

(C) Awards a degree, diploma, or certificate to persons who successfully complete the program; or

(iii) Has successfully completed a formal educational program (for preparing registered nurses to perform an expanded role in a delivery of specialized primary health care services) that does not meet the requirements of paragraph (17)(ii) of this section, and has been performing an expanded role in the delivery of specialized primary health care services for a total of 12 months during the 18-month period immediately preceding the effective date of the regulations governing certification of rural health clinics (February 8, 1978).

* * * * *

PART 449—SERVICES AND PAYMENT IN MEDICAL ASSISTANCE PROGRAMS

2. § 449.10(b) is amended by inserting "(i)" after "(2)" and by adding two new paragraphs (b)(2)(ii) and (b)(2)(iii), to read as follows:

§ 449.10 Amount, duration, and scope of medical assistance.

* * * * *

(b) *Federal financial participation.*

* * * * *

(2)(i) *Outpatient hospital services.*

* * * * *

(ii) *Rural health clinic services.* If nurse practitioners or physician assistants (as defined in § 481.1 of this chapter) are not prohibited by State law from furnishing primary health care, "rural health clinic services" are the following services, when furnished by a rural health clinic that has been certified in accordance with part 481 of this chapter:

(A) Services furnished by a physician within the scope of practice of his or her profession under State law, if the physician performs the services in the clinic or the services are furnished away from the clinic and the physician has an agreement with the clinic providing that he or she will be paid by the clinic for such services.

(B) Services furnished by a physician assistant, nurse practitioner, nurse midwife or other specialized nurse practitioner (as defined in §§ 405.2401 and 481.2 of this chapter) if the services are furnished in accordance with the requirements specified in § 405.2414(a) of this chapter.

(C) Services and supplies that are furnished as an incident to professional services furnished by a physician, physician assistant, nurse practitioner, nurse midwife, or specialized nurse practitioner. (See §§ 405.2413 and 405.2415 of this chapter for the criteria for determining whether services and supplies are included under this clause.)

(D) Part-time or intermittent visiting nurse care and related medical supplies (other than drugs and biologicals) if:

(*1*) The clinic is located in an area in which the Secretary has determined that there is a shortage of home health agencies (see § 405.2417 of this chapter);

(*2*) The services are furnished by a registered nurse, a licensed practical nurse or a licensed vocational nurse employed by, or otherwise compensated for the services by, the clinic;

(*3*) The services are furnished to a homebound individual; and

(*4*) The services are furnished under a written plan of treatment that is established and reviewed at least every 60 days by a supervising physician of the clinic or that is established by a physician, physician assistant, nurse practitioner, nurse midwife or specialized nurse practitioner and reviewed and approved at least every 60 days by a supervising physician of the clinic.

For purposes of visiting nurse care, a "homebound individual" means an individual who is permanently or temporarily confined to his or her place of residence because of a medical or health condition. The individual may be considered home bound if he or she leaves the place of residence infrequently. For this purpose, "place of residence" does not include a hospital or a skilled nursing facility.

(iii) *Other ambulatory services furnished by a rural health clinic.* If the State plan covers rural health clinic services, any ambulatory service other than rural health clinic services, as defined in paragraph (b)(2)(ii) of this section, that is otherwise included in the plan and meets specific State plan requirements for the furnishing of that service. Other ambulatory services furnished by a rural health clinic are not subject to the physician supervision requirements specified in § 481.8(b) of this chapter, unless required by State law or the State plan.

* * * * *

PART 450—ADMINISTRATION OF MEDICAL ASSISTANCE PROGRAMS

3. § 450.30(a) is amended by adding a new paragraph (a)(10) to read as follows:

§ 450.30 Reasonable charges.

(a) *State plan requirements.* A State plan for medical assistance under title XIX of the Social Security Act must:

* * * * *

(10) *Services furnished by a rural health clinic.* Effective July 1, 1978, provide for payment of rural health clinic services, as defined in § 449.10(b)(2)(ii) of this chapter, and of any other ambulatory services furnished by a rural health clinic that are covered by the State plan.

(i) For "provider clinics", the plan must provide for payment on the basis of the principles specified in the medicare regulations in part 405, subpart D, of this chapter. A "provider clinic" is a clinic that is an integral part of an institutional provider (hospital, skilled nursing facility, or home health

agency) that is participating in medicare and is operated under common licensure, governance and professional supervision with other departments of the institution.

(ii) For any clinic that is not a "provider clinic", and does not furnish any ambulatory services other than rural health clinic services, the plan must provide for payment at the reasonable cost rate per visit established for the clinic by the medicare carrier in accordance with §§ 405.2426 through 405.2429 of this chapter.

(iii) For any clinic that is not a "provider clinic", and does offer any ambulatory services other than rural health clinic services, the plan must provide for payment of those other ambulatory services by one of the following methods:

(A) Payment for all services offered by the clinic at a single cost-reimbursement rate per clinic visit, established by the medicare carrier, that includes the cost of all services furnished by the clinic.

(B) Payment for each ambulatory service, other than rural health clinic services, at rates or charges established by the State, subject to the upper limits specified in paragraph (b) of this section. Under this option, rural health clinic services must be paid at the medicare reimbursement rate per visit, as specified in § 405.2426 of this chapter.

(C) Payment for dental services on the basis of a cost rate per clinic visit, calculated by the medicare carrier on the basis of the clinic's reasonable costs for dental services. If the State agency elects this option for dental services, the State plan must provide for payment of all other services in accordance with paragraph (a)(10)(iii)(A) or (a)(10)(iii)(B) of this section.

(iv) Payments made according to a cost reimbursement rate per visit will be subject to reconciliation after the close of the reporting period, in accordance with § 405.2427 of this chapter.

(v) Payments made at cost reimbursement rates are subject to any screening guidelines or tests of reasonableness established by the Health Care Financing Administration.

(vi) For purposes of paragraph (a)(10)(iii)(A) of this section, "visit" means a face-to-face encounter between a clinic patient and any health professional whose services are reimbursed under the State plan. Encounters with more than one health professional, and multiple encounters with the same health professional, that take place on the same day and at a single location constitute a single visit, except for cases in which the patient, subsequent to the first encounter, suffers illness or injury requiring additional diagnosis or treatment.

PART 481—CERTIFICATION OF CERTAIN HEALTH FACILITIES

4. Part 481 is amended by revising sections 481.2 (b) and (d), 481.8(a), 481.9 (a) and (c), and 481.10 (a) and (c) to read as follows:

§ 481.2 Definitions.

As used in this subpart, unless the context indicates otherwise:

(a) *"Direct services"* means services provided by the clinic's staff.

(b) *"Nurse practitioner"* means a registered professional nurse who is currently licensed to practice in the State, who meets the State's requirements governing the qualifications of nurse practitioners, and who meets one of the following conditions:

(1) Is currently certified as a primary care nurse practitioner by the American Nurses' Association or by the National Board of Pediatric Nurse Practitioners and Associates; or

(2) Has satisfactorily completed a formal 1 academic year educational program that:

(i) Prepares registered nurses to perform an expanded role in the delivery of primary care;

(ii) Includes at least 4 months (in the aggregate) of classroom instruction and a component of supervised clinical practice; and

(iii) Awards a degree, diploma, or certificate to persons who successfully complete the program; or

(3) Has successfully completed a formal educational program (for preparing registerd nurses to perform an expanded role in the delivery of primary care) that does not meet the requirements of paragraph (b)(2) of this section, and has been performing an expanded role in the delivery of primary care for a total of 12 months during the 18-month period immediately preceding the effective date of this subpart.

(c) *"Physician"* means a doctor of medicine or osteopathy legally authorized to practice medicine or surgery in the State.

(d) *"Physician assistant"* means a person who meets the applicable State requirements governing the qualifications for assistants to primary care physicians, and who meets at least one of the following conditions: (1) Is currently certified by the National Commission on Certification of Physician Assistants to assist primary care physicians; or

(2) Has satisfactorily completed a program for preparing physician's assistants that:

(i) Was at least 1 academic year in length;

(ii) Consisted of supervised clinical practice and at least 4 months (in the aggregate) of classroom instruction directed toward preparing students to deliver health care; and

(iii) Was accredited by the American Medical Association's Committee on Allied Health Education and Accreditation; or

(3) Has satisfactorily completed a formal educational program (for preparing physician assistants) that does not meet the requirements of paragraph (d)(2) of this section and has been assisting primary care physicians for a total of 12 months during the 18-month period immediately preceding the effective date of this subpart.

* * * * *

§ 481.8 Staffing and staff responsibilities.

(a) *Staffing.* (1) The clinic has a health care staff that includes one or more physicians and one or more physician's assistants or nurse practitioners.

(2) The physician member of the staff may be the owner of the clinic, an employee of the clinic, or under agreement with the clinic to carry out the responsibilities required under this section.

(3) The physician's assistant or nurse practitioner member of the staff may be the owner of the clinic or an employee of the clinic.

(4) The staff may also include ancillary personnel who are supervised by the professional staff.

(5) The staff is sufficient to provide the services essential to the operation of the clinic.

(6) A physician, nurse practitioner, or physician assistant is available to furnish patient care services at all times the clinic operates. A nurse practitioner or a physician assistant is available to furnish patient care services at least 60 percent of the time the clinic operates.

* * * * *

§ 481.9 Provision of services.

(a) *Basic requirements.* (1) All services offered by the clinic are furnished in accordance with applicable Federal, State, and local laws; and (2) the clinic is primarily engaged in providing outpatient health services and meets all other conditions of this subpart.

(b) *Patient care policies.* (1) The clinic's health care services are furnished in accordance with appropriate written policies which are consistent with applicable State law.

(2) The policies are developed with the advice of a group of professional personnel that includes one or more physicians and one or more physician assistants or nurse practitioners. At least one member is not a member of the clinic staff.

(3) The policies include:

(i) A description of the services the clinic furnishes directly and those fur-

nished through agreement or arrangement.

(ii) Guidelines for the medical management of health problems which include the conditions requiring medical consultation and/or patient referral, the maintenance of health care records, and procedures for the periodic review and evaluation of the services furnished by the clinic.

(iii) Rules for the storage, handling, and administration of drugs and biologicals.

(4) These policies are reviewed at least annually by the group of professional personnel required under paragraph (b)(2) of this section, and reviewed as necessary by the clinic.

(c) *Direct services.*—(1) *General.* The clinic staff furnishes those diagnostic and therapeutic services and supplies that are commonly furnished in a physician's office or at the entry point into the health care delivery system. These include medical history, physical examination, assessment of health status, and treatment for a variety of medical conditions.

(2) *Laboratory.* The clinic provides basic laboratory services essential to the immediate diagnosis and treatment of the patient, including:

(i) Chemical examinations of urine by stick or tablet methods or both (including urine ketones);

(ii) Microscopic examinations of urine sediment;

(iii) Hemoglobin or hematacrit;

(iv) Blood sugar;

(v) Gram stain;

(vi) Examination of stool specimens for occult blood;

(vii) Pregnancy tests;

(viii) Primary culturing for transmittal to a certified laboratory; and

(ix) Test for pinworm.

* * * * *

§ 481.10 Patient health records.

(a) *Records system.* (1) The clinic maintains a clinical record system in accordance with written policies and procedures.

(2) A designated member of the professional staff is responsible for maintaining the records and for insuring that they are completely and accurately documented, readily accessible, and systematically organized.

(3) For each patient receiving health care services, the clinic maintains a record that includes, as applicable:

(i) Identification and social data, evidence of consent forms, pertinent medical history, assessment of the health status and health care needs of the patient, and a brief summary of the episode, disposition, and instructions to the patient;

(ii) Reports of physical examinations, diagnostic and laboratory test results, and consultative findings;

(iii) All physician's orders, reports of treatments and medications, and other pertinent information necessary to monitor the patient's progress;

(iv) Signatures of the physician or other health care professional.

(b) *Protection of record information.* (1) The clinic maintains the confidentiality of record information and provides safeguards against loss, destruction, or unauthorized use.

(2) Written policies and procedures govern the use and removal of records from the clinic and the conditions for release of information.

(3) The patient's written consent is required for release of information not authorized by law.

(c) *Retention of records.* The records are retained for at least 6 years from date of last entry, and longer if required by State statute.

(Section 1102, 1833 and 1902(a)(13), Social Security Act: 49 Stat. 647, 91 Stat. 1485 (42 U.S.C. 1302, 13951 and 1396a (a)(13).)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; 13.774, Medicare-Supplementary Medical Insurance.)

Dated: June 26, 1978.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

Approved: July 8, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

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